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भारत का राजपत्र
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No. 23] NEW DELHI, JUNE 27—JULY 3, 2021, SATURDAY/ASHADHA 6 –ASHADHA 12, 1943

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कोयला मंत्रालय

नई दिल्ली, 25 जून, 2021

का.आ. 375.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी, जो भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 18 मार्च, 2021 में प्रकाशित, भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 1244(अ), तारीख 17 मार्च, 2021 के प्रकाशन पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) और भूमि में या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए थे ;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि सेंट्रल कोलफील्ड्स लिमिटेड, रांची, झारखंड (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जिन्हें केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त भूमि का माप 3.229 हेक्टेयर (लगभग) या 7.980 एकड़ (लगभग) उक्त भूमि में या उस पर के सभी अधिकार तारीख 18 मार्च, 2021 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात्:—

(1) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन और अन्य सुसंगत विधियों के अधीन यथा अवधारित सभी प्रतिकर, ब्याज, नुकसानियों, इत्यादि और वैसी ही मदों की बाबत् सभी संदाय करेगी ;

(2) सरकारी कंपनी द्वारा शर्त (1) के अधीन, संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और उक्त अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में अपील, आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी सरकारी कंपनी द्वारा वहन किए जाएंगे;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

(4) सरकारी कंपनी के पास उक्त भूमि और उक्त भूमि में इस प्रकार निहित अधिकारों को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिये जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/01/2020-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 25th June, 2021

S.O. 375.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 1244(E), dated the 17th March, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 18th March, 2021, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) are vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas, the Central Government is satisfied that the Central Coalfields Limited, Ranchi, Jharkhand (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that the said land measuring 3.229 hectares (approximately) or 7.980 acres (approximately) and all rights in or over the said land so vested, shall, with effect from 18th March, 2021, instead of continuing to so vest in the Central Government shall vest in the Government company, subject to the following terms and conditions, namely:—

(1) The Government Company shall make all payments in respect of compensation, interest, damages etc. and the like, as determined under the provisions of the said Act and other relevant law;

(2) A Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable by the Government Company under condition (1) and all expenditure incurred in connection with any such tribunal and persons appointed to assist the Tribunal shall be borne by the said Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in or over the said land, so vested, shall also be borne by the Government Company;

(3) The Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;

(4) The Government Company shall have no power to transfer the aforesaid rights in the said land, so vested, to any other person without the prior approval of the Central Government; and

(5) The Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land as and when necessary.

[F. No. 43015/01/2020-LA&IR]

RAM SHIROMANI SAROJ, Dy. Secy.

नई दिल्ली, 25 जून, 2021

का.आ. 376.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में वर्णित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त किए जाने की संभावना है ;

अत:, उक्त अनुसूची में वर्णित क्षेत्र में अंतर्विष्ट ब्योरे रेखांक संख्या सी- I(ई)/ III/जेजेजे/0421-970, तारीख 23 अप्रैल, 2021, का निरीक्षण, वेस्टर्न कोलफील्ड्स लिमिटेड, (राजस्व विभाग), कोल इस्टेट, सिविल लाईन्स, नागपुर - 440 001 (महाराष्ट्र) के कार्यालय में या मुख्य महाप्रबंधक (खोज प्रभाग), केन्द्रीय खान योजना और डिजाइन संस्थान, गोंडवाना पॅलेस, कांके रोड, रांची - 834 001 के कार्यालय में या कोयला नियंत्रक, 1 काउंसिल हाउस स्ट्रीट, कोलकाता - 700 001 के कार्यालय में या जिला कलेक्टर, जिला चंद्रपुर (महाराष्ट्र) के कार्यालय में किया जा सकता है ;

अत: अब केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अनुसूची में वर्णित भूमि से कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है ;

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति, —

(i) सम्पूर्ण भूमि या उसके किसी भाग या उक्त भूमि में या उसके ऊपर किसी अधिकार के अर्जन पर आक्षेप कर सकेगा; या

(ii) उक्त अधिसूचना की धारा 4 की उप-धारा (3) के अधीन की गयी किसी कार्यवाही से हुई या होने वाली संभावित किसी क्षति के लिए अधिनियम की धारा 6 के अधीन प्रतिकर का दावा कर सकेगा ; या

(iii) उक्त अधिनियम की धारा (13) की उप-धारा (1) के अधीन पूर्वेक्षण अनुज्ञप्तियों के प्रभावहीन होने के संबंध में या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन खनन पट्टे प्रभावहीन होने के लिए प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनयम की धारा 13 की उपधारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों की बाबत उपगत व्यय को उपदर्शित करने के लिए पूर्वोक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा।

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर, क्षेत्रीय महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड, बल्लारपुर क्षेत्र, या मुख्य प्रबंधक / विभागाध्यक्ष, वेस्टर्न कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, कोल ईस्टेट, सिविल लाईन्स, नागपुर - 440 001 (महाराष्ट्र) को भेज सकेगा ।

अनुसूची

सास्ती एक्सपॅन्शन ओपनकास्ट माईन (फेज - II)

बल्लारपुर क्षेत्र

जिला चंद्रपुर (महाराष्ट्र)

(रेखांक संख्या सी- I (ई)/ III/जेजेजे/0421-970, तारीख 23 अप्रैल, 2021)

भाग - 1

सभी अधिकार :

क्रम सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणीं
					निजी	सरकारी	वन		
1	गोवरी	-	राजुरा	चंद्रपुर	52.662	0.19	0.00	52.852	भाग
कुल :–					52.662	0.19	0.00	52.852	-

भाग – 2

सभी अधिकार :

क्रम सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणीं
					निजी	सरकारी	वन		
1	गोवरी	-	राजुरा	चंद्रपुर	31.438	0.14	0.00	31.578	भाग
2	माथरा	-	राजुरा	चंद्रपुर	125.23	6.25	0.00	131.48	भाग
3	भडांगपुर	-	राजुरा	चंद्रपुर	4.29	0.00	0.00	4.29	भाग
कुल :–					160.958	6.39	0.00	167.348	-

भाग – 3

सभी अधिकार :

क्रम सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणीं
					निजी	सरकारी	वन		
1	सास्ती	-	राजुरा	चंद्रपुर	0.00	0.63	0.00	0.63	भाग
कुल :-					0.00	0.63	0.00	0.63	-

भाग – 4

सभी अधिकार :

क्रम सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणीं
					निजी	सरकारी	वन		
1	सास्ती	-	राजुरा	चंद्रपुर	0.00	6.33	0.00	6.33	भाग
कुल :-					0.00	6.33	0.00	6.33	-

कुल क्षेत्र (भाग – 1 + भाग – 2 + भाग – 3 + भाग – 4 = 227.16 हेक्टर (लगभग)

या 561.31 एकड़ (लगभग)

भाग 1

(1) ग्राम गोवरी के अधिसूचित क्षेत्र के प्लाट संख्यांक :

348/भाग / अ - 348/ भाग/ ब - 348/ भाग/ क, 349/1- 349/2- 349/3, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 361, 362, 363, 364/1- 364/1/ अ - 364/2- 364/3, 365/1- 365/2- 365/3, 366/1- 366/2, 369/1/ अ - 369/1/ ब - 369/1/ क - 369/1/ ड - 369/2, 370/1- 370/2- 370/3- 370/4/अ- 370/5/ अ, 371/1, 372, 373/2, 373/1, 378, 464/अ - 464/ब, 469, 470, 471, 472, 473, 474, 475/1- 475/2,

सरकारी भूमि: 371/2, 373/2.

भाग 2

(1) ग्राम गोवरी के अधिसूचित क्षेत्र के प्लाट संख्यांक:

344/1- 344/2, 345/1- 345/2/ अ - 345/2/ब, 346, 347/1- 347/2- 347/3, 348/ भाग/ अ - 348/ भाग/ब - 348/भाग/ क, 349/1- 349/2- 349/3, 350, 365/1- 365/2- 365/3, 366/1, 366/2, 367/1- 367/2- 367/3, 368, 369/1/ अ - 369/1/ ब - 369/1/ क - 369/1/ ड - 369/2, 370/1- 370/2- 370/3- 370/4/अ - 370/5/अ , 373/1, 378, 379/1- 379/2.

सरकारी भूमि: 370/4/ब - 370/5/ब.

(2) ग्राम माथरा के अधिसूचित क्षेत्र के प्लाट संख्यांक :

2, 3, 4, 6, 9, 10, 12, 13, 15, 16, 17, 18, 19/1- 19/2, 20/1अ - 20/1ब - 20/2/अ - 20/2/ब, 21, 22/1- 22/2, 23/1- 23/2, 24/1- 24/2, 28, 29/1- 29/2, 30/1- 30/2, 31, 32, 33, 34/1/ अ /1- 34/1/अ /2- 34/1/ब - 34/2, 35, 36/1- 36/2, 37, 38, 39, 40, 41/1- 41/2, 42, 43, 44/1- 44/2, 45/1- 45/2, 46/1- 46/2, 47/1- 47/2- 47/3, 48, 49, 50/1- 50/2- 50/3- 50/4- 50/5, 51, 52, 55/1- 55/2, 56, 57, 58, 59, 61/1- 61/2, 62/1- 62/2, 63, 64, 65, 66/1- 66/2, 67, 68, 69, 70/1- 70/2, 71, 81, 82, नाला, सड़क.

(3) ग्राम भडांगपुर के अधिसूचित क्षेत्र के प्लाट संख्यांक :

171/1- 171/2- 171/3, 172/1- 172/2.

भाग 3

(1) ग्राम सास्ती के अधिसूचित क्षेत्र के प्लाट संख्यांक :

सरकारी भूमि.

भाग 4

(1) ग्राम सास्ती के अधिसूचित क्षेत्र के प्लाट संख्यांक:

सरकारी भूमि.

सीमा वर्णन

भाग – 1

क – ख : रेखा ग्राम गोवरी में प्लाट संख्या 475 के पास बिन्दु 'क' से आरंभ होती है और सास्ती खुली खदान के लिए पूर्व में अधिग्रहित भूमि की बाह्य सीमा से लगकर गुजरती है और प्लाट संख्या 470 के पास बिन्दु 'ख' पर मिलती है।

ख – ग : रेखा बिन्दु 'ख' से आरंभ होती है और प्लाट संख्यांक 352, 351 और 348 (भाग) के उत्तर सीमा से (सास्ती खुली खदान के लिए पूर्व में अधिग्रहित भूमि की दक्षिण सीमा से लगकर) गुजरती है और बिन्दु 'ग' पर मिलती है।

ग - घ : रेखा बिन्दु 'ग' से आरंभ होती है और सास्ती रेल्वे साइडिंग के लिए पूर्व में अधिग्रहित भूमि के पश्चिम सीमा से लगकर गुजरती है और प्लाट संख्यांक 348, 349, 350, 365 और 366 में से होकर गुजरती है और बिन्दु 'घ' पर मिलती है।

घ - ड. : रेखा बिन्दु 'घ' से आरंभ होती है और सास्ती रेल्वे साइडिंग के लिए पूर्व में अधिग्रहित भूमि के पश्चिम सीमा से लगकर गुजरती है और प्लाट संख्यांक 369, 370 (भाग) और 378 (भाग) मे से होकर गुजरती है और बिन्दु 'ड.' पर मिलती है।

ड.- च : रेखा बिन्दु 'ड.' से आरंभ होती है और प्लाट संख्या 378 की पश्चिम सीमा को लगकर गुजरती है और बिन्दु 'च' पर मिलती है।

च – छ : रेखा बिन्दु 'च' से आरंभ होती है और प्लाट संख्यांक 371 और 373 के दक्षिण सीमा से लगकर गुजरती है और बिन्दु 'छ' पर मिलती है ।

छ – ज : रेखा बिन्दु 'छ' से आरंभ होती है और प्लाट संख्यांक 373, 372, 361, 359, 464 के बाह्य सीमा से लगकर गुजरती है और बिन्दु 'ज' ग्राम गोवरी पर मिलती है ।

ज – झ : रेखा बिन्दु 'ज' से आरंभ होती है और प्लाट संख्यांक 464, 469, 470 (भाग), 470 (भाग), 471, 472, 473 और 474 के बाह्य सीमा से लगकर गुजरती है और बिन्दु 'झ' पर मिलती है ।

झ - ञ : रेखा बिन्दु 'झ' से आरंभ होती है और प्लाट संख्यांक 474, 475 की बाह्य सीमा से लगकर गुजरती है और बिन्दु 'ञ' पर मिलती है ।

ञ - क : रेखा बिन्दु 'ञ' से आरंभ होती है और प्लाट संख्या 475 के बाह्य सीमा से लगकर गुजरती है और प्लाट संख्या 475 के पास के बिन्दु 'क' पर समाप्त होती है ।

भाग – 2

ट – ठ : रेखा ग्राम गोवरी में बिन्दु 'ट' से आरंभ होती है और पूर्व दिशा में सास्ती खुली खदान के लिए पूर्व में अधिग्रहित भूमि की दक्षिण सीमा से लगकर गुजरती है और ग्राम गोवरी और माथरा के सम्मिलित सीमा पर स्थित बिन्दु 'ठ' पर मिलती है ।

ठ – ड : रेखा बिन्दु 'ठ' से आरंभ होती है और सास्ती खुली खदान के लिए पूर्व में अधिग्रहित भूमि के दक्षिण-पूर्वी सीमा से लगकर गुजरती है और कच्ची सड़क को पार कर ग्राम भडांगपुर और माथरा की सम्मिलित सीमा पर स्थित बिन्दु 'ड' पर मिलती है ।

ड – ढ : रेखा बिन्दु 'ड' से आरंभ होती है और सास्ती खुली खदान के लिए पूर्व में अधिग्रहित भूमि की सीमा तथा ग्राम भडांगपुर में प्लाट संख्यांक 171 और 172 के पश्चिमी सीमा से लगकर गुजरती है और बिन्दु 'ढ' पर मिलती है ।

ढ – ण : रेखा बिन्दु 'ढ' से आरंभ होती है और प्लाट संख्या 172 की उत्तरी सीमा तथा सास्ती खुली खदान के लिए पूर्व में अधिग्रहित भूमि की उत्तरी सीमा से लगकर गुजरती है और ग्राम भडांगपुर और माथरा की सम्मिलित सीमा रेखा पर स्थित बिन्दु 'ण' पर मिलती है ।

ण – त : रेखा बिन्दु 'ण' से आरंभ होती है और प्लाट संख्यांक 172, 171 (भाग) के पूर्वी सीमा से लगकर गुजरती है और ग्राम भडांगपुर और माथरा की सम्मिलित सीमा रेखा पर स्थित बिन्दु 'त' पर मिलती है ।

त – थ : रेखा बिन्दु 'त' से आरंभ होती है और प्लाट संख्या 55 के उत्तरी और पूर्वी सीमा से लगकर गुजरती है तथा ग्राम माथरा में बिन्दु 'थ' पर मिलती है ।

थ – द : रेखा बिन्दु 'थ' से आरंभ होती है और प्लाट संख्यांक 57, 58 और 59 के उत्तरी सीमा से लगकर गुजरती है और ग्राम धोपताला और ग्राम माथरा की सम्मिलित सीमा रेखा पर स्थित बिन्दु 'द' पर मिलती है ।

द – ध : रेखा बिन्दु 'द' से आरंभ होती है एवं प्लाट संख्या 59 के पूर्वी सीमा से लगकर गुजरती है तथा ग्राम धोपताला एवं ग्राम माथरा की सम्मिलित सीमा रेखा पर स्थित बिन्दु 'ध' पर मिलती है।

ध – न : रेखा बिन्दु 'ध' से आरंभ होती है और प्लाट संख्यांक 59, 61, 62, 63 (भाग), 71 के बाह्य सीमा से लगकर गुजरती है और बिन्दु 'न' पर मिलती है।

न – प : रेखा बिन्दु 'न' से आरंभ होती है और प्लाट संख्यांक 71, 69, 81, 82 और पादचारी मार्ग के बाह्य सीमा से लगकर गुजरती है और बिन्दु 'प' पर मिलती है।

प – फ : रेखा बिन्दु 'प' से आरंभ होती है और पादचारी मार्ग को पार कर प्लाट संख्यांक 28, 29 (भाग), 24 (भाग), 23 की बाह्य से लगकर गुजरती है और बिन्दु 'फ' पर मिलती है।

फ – ब : रेखा बिन्दु 'फ' से आरंभ होती है और प्लाट संख्यांक 23, 22 (भाग) के दक्षिण सीमा से लगकर गुजरती है और बिन्दु 'ब' पर मिलती है।

ब – भ : रेखा बिन्दु 'ब' से आरंभ होती है और प्लाट संख्या 17 के पूर्वी सीमा से लगकर गुजरती है और बिन्दु 'भ' पर मिलती है।

भ – म : रेखा बिन्दु 'भ' से आरंभ होती है और प्लाट संख्यांक 12, 13, 9 और 6 के उत्तरी सीमा से लगकर गुजरती है और बिन्दु 'म' पर मिलती है।

म- य : रेखा बिन्दु 'म' से आरंभ होती है और प्लाट संख्यांक 6 (भाग), 4 की बाह्य सीमा से लगकर गुजरती है, फिर पादचारी मार्ग को पार कर ग्राम माथरा के नाले के किनारे पर बिन्दु 'य' पर मिलती है।

य – क1 : रेखा बिन्दु 'य' से आरंभ होती है और माथरा नाला के सीमा पर स्थित बिन्दु 'क1' पर मिलती है।

क1 – ख1 : रेखा बिन्दु 'क1' से आरंभ होती है और पादचारी मार्ग को पार करती है और प्लाट संख्यांक 2, 3 और 10 की दक्षिण सीमा से लगकर गुजरती है और बिन्दु 'ख1' पर मिलती है।

ख1 – ग1 : रेखा बिन्दु 'ख1' से आरंभ होती है और प्लाट संख्या 11 (भाग) के पूर्वी सीमा से लगकर गुजरती है और बिन्दु 'ग1' पर मिलती है।

ग1– घ1-ड.1 : रेखा बिन्दु 'ग1' से आरंभ होती है और प्लाट संख्यांक 11, 12 की बाह्य सीमा से लगकर गुजरती है और बिन्दु 'घ1' से होकर बिन्दु 'ड.1' पर मिलती है।

ड.1 – च1 : रेखा बिन्दु 'ड.1' से आरंभ होती है और प्लाट संख्यांक 15 और 16 के बाह्य सीमा से लगकर गुजरती है और ग्राम माथरा और गोवरी की सम्मिलित सीमा रेखा पर स्थित बिन्दु 'च1' पर मिलती है।

च1 – छ1 : रेखा बिन्दु 'च1' से आरंभ होती है और ग्राम गोवरी और माथरा की सम्मिलित सीमा से लगकर गुजरती है और बिन्दु 'छ1' पर मिलती है।

छ1 – ज1 : रेखा बिन्दु 'छ1' से आरंभ होती है और पश्चिम दिशा में प्लाट संख्या 370 में से गुजरती है फिर प्लाट संख्या 368 के दक्षिण सीमा से लगकर गुजरती है और ग्राम गोवरी में बिन्दु 'ज1' ग्राम गोवरी पर मिलती है।

ज1 – झ1 : रेखा बिन्दु 'ज1' से आरंभ होती है और दक्षिण दिशा में प्लाट संख्या 370 (भाग) में से गुजरती है फिर सड़क को पार कर प्लाट संख्या 379 के पूर्वी सीमा से लगकर गुजरती है और बिन्दु 'झ1' पर मिलती है।

झ1 - ञ 1 : रेखा बिन्दु 'झ1' से आरंभ होती है और प्लाट संख्यांक 379 और 378 (भाग) के दक्षिण सीमा से लगकर गुजरती है और बिन्दु 'ञ1' पर मिलती है ।

ञ1 – ट1 : रेखा बिन्दु 'ञ1' से आरंभ होती है और सास्ती रेल्वे साइडिंग के लिए पूर्व में अधिग्रहित भूमि के पूर्वी सीमा से लगकर गुजरती है और ग्राम गोवरी में बिन्दु 'ट1' पर मिलती है ।

ट1 – ट : रेखा बिन्दु 'ट1' से आरंभ होती है और सास्ती रेल्वे साइडिंग के लिए पूर्व में अधिग्रहित भूमि के पूर्वी सीमा से लगकर गुजरती है और बिन्दु 'ट' पर मिलती है ।

भाग - 3

ठ1-ड1-ढ1-ण1: रेखा ग्राम सास्ती में नाले के समीप बिन्दु 'ठ1' से आरंभ होती है और नाले से लगकर बिन्दु 'ड1', 'ढ1', 'ण1' से होकर बिन्दु 'ठ1' पर मिलती है ।

भाग – 4

त1-थ1-द1: रेखा ग्राम सास्ती में प्लाट संख्या 305 के समीप नाले के पट पर स्थित बिन्दु 'त1' से आरंभ होती है और उत्तर-पश्चिम दिशा में नाले से लगकर गुजरती है, फिर बिन्दु 'थ1' से होकर प्लाट संख्या 208 के समीप नाले के तट पर स्थित बिन्दु 'द1' पर मिलती है ।

द1 – ध1 : रेखा बिन्दु 'द1' से आरंभ होती है और पूर्व दिशा में नाला पार कर बिन्दु 'ध1' पर मिलती है ।

ध1-न1-प1 : रेखा बिन्दु 'ध1' से आरंभ होती है और दक्षिण-पूर्व दिशा में नाले के तट को लगकर गुजरती है फिर तट पर स्थित बिन्दु 'न1' से होकर बिन्दु 'ध1' पर मिलती है ।

प1 – त1 : रेखा बिन्दु 'प1' से आरंभ होती है और नाला पार कर आरंभिक बिन्दु 'त1' पर समाप्त होती है ।

[फा. सं. 43015/03/2021-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

New Delhi, the 25th June, 2021

S.O. 376.—Whereas, it appears to the Central Government that coal is likely to be obtained from the land in the locality described in the Schedule annexed hereto;

And Whereas, the plan bearing number C-I(E)/III/JJJ/0421-970, dated the 23 April, 2021, of the area described in the said Schedule can be inspected at the office of the Western Coalfields limited (Revenue Department), Coal Estate, Civil Lines, Nagpur– 440 001 (Maharashtra) or at the office of the Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Palace, Kanke Road, Ranchi – 834 001 or at the office of the Coal Controller, 1, Council House Street, Kolkata – 700 001 or at the office of the District Collector, District Chandrapur (Maharashtra);

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), for all rights the Central Government hereby gives notice of its intention to prospect for coal from lands described in the said Schedule;

Any persons interested in the land described in the said Schedules may, –

(i) object to the acquisition of the whole or any part of the land or of any rights in or over the said land; or

(ii) claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 of the thereof ; or

(iii) claim compensation under sub-section (1) of section 13 of the said Act in respect of prospecting license ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the office of the Area General Manager, Western Coalfields Limited, Ballarpur Area, Post Sasti, Tahsil Rajura, District Chandrapur (Maharashtra) or Chief Manager/Head of Department (Land and Revenue), Western Coalfields Limited, Land and Revenue Department, Coal Estate, Civil Lines, Nagpur – 440 001 (Maharashtra) within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

Sasti Expansion Opencast Mine (Phase – II)
Ballarpur Area
District Chandrapur (Maharashtra)

[Plan bearing number C-I(E)/III/JJJ/0421-970, dated the 23rd April, 2021]

Part – 1

All Rights :

Sl. No.	Name of Village	Patwari Circle Number	Tahsil	District	Description of land			Total (in hectares)	Remarks
					Tenancy	Govt.	Forest		
1.	Gowari	-	Rajura	Chandrapur	52.662	0.19	0.00	52.852	Part
Total :					52.662	0.19	0.00	52.852	

Part - 2

All Rights :

Sl. No.	Name of Village	Patwari Circle Number	Tahsil	District	Description of land			Total (in hectares)	Remarks
					Tenancy	Govt.	Forest		
1.	Gowari	-	Rajura	Chandrapur	31.438	0.14	0.00	31.578	Part
2.	Mathra	-	Rajura	Chandrapur	125.23	6.25	0.00	131.48	Part
3.	Bhadang-pur	-	Rajura	Chandrapur	4.29	0.00	0.00	4.29	Part
Total :					160.958	6.39	0.00	167.348	

Part – 3

All Rights :

Sl. No.	Name of Village	Patwari Circle Number	Tahsil	District	Description of land			Total (in hectares)	Remarks
					Tenancy	Govt.	Forest		
1	Sasti	-	Rajura	Chandrapur	0.00	0.63	0.00	0.63	Part
Total :					0.00	0.63	0.00	0.63	

Part – 4

All Rights :

Sl. No.	Name of Village	Patwari Circle Number	Tahsil	District	Description of land			Total (in hectares)	Remarks
					Tenancy	Govt.	Forest		
1	Sasti	-	Rajura	Chandrapur	0.00	6.33	0.00	6.33	Part
Total :					0.00	6.33	0.00	6.33	

Total area (Part 1 + Part 2 + Part 3 + Part 4) = 227.16 hectares (approximately)
or 561.31 acres (approximately)

Part - 1

(1) Plot numbers within notification boundary in village Gowari :

348/Part/A- 348/Part/B- 348/Part/C, 349/1- 349/2- 349/3, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 361, 362, 363, 364/1- 364/1/A- 364/2- 364/3, 365/1- 365/2- 365/3, 366/1-366/2, 369/1/A- 369/1/B- 369/1/C- 369/1/D- 369/2, 370/1- 370/2- 370/3- 370/4/A- 370/5/A, 371/1, 372, 373/2, 373/1, 378, 464/A- 464/B, 469, 470, 471, 472, 473, 474, 475/1- 475/2,

Govt. Land : 371/2, 373/2.

Part - 2

(1) Plot numbers within notification boundary in village Gowari :

344/1- 344/2, 345/1- 345/2/A- 345/2/B, 346, 347/1- 347/2- 347/3, 348/Part/A- 348/Part/B- 348/Part/C, 349/1- 349/2- 349/3, 350, 365/1- 365/2- 365/3, 366/1, 366/2, 367/1- 367/2- 367/3, 368, 369/1/A- 369/1/B- 369/1/C- 369/1/D- 369/2, 370/1- 370/2- 370/3- 370/4/A- 370/5/A, 373/1, 378, 379/1- 379/2.

Govt land: 370/4/B- 370/5/B.

(2) Plot numbers within notification boundary in village Mathara :

2, 3, 4, 6, 9, 10, 12, 13, 15, 16, 17, 18, 19/1- 19/2, 20/1A- 20/1B- 20/2/A- 20/2/B, 21, 22/1- 22/2, 23/1- 23/2, 24/1- 24/2, 28, 29/1- 29/2, 30/1- 30/2, 31, 32, 33, 34/1/A/1- 34/1/A/2- 34/1/B- 34/2, 35, 36/1- 36/2, 37, 38, 39, 40, 41/1- 41/2, 42, 43, 44/1- 44/2, 45/1- 45/2, 46/1- 46/2, 47/1- 47/2- 47/3, 48, 49, 50/1- 50/2- 50/3- 50/4- 50/5, 51, 52, 55/1- 55/2, 56, 57, 58, 59, 61/1- 61/2, 62/1- 62/2, 63, 64, 65, 66/1- 66/2, 67, 68, 69, 70/1- 70/2, 71, 81, 82, Raod, Nallah

(3) Plot numbers within notification boundary in village Bhadangpur :

171/1- 171/2- 171/3, 172/1- 172/2.

Part - 3

(1) Plot number within notification boundary in village Sasti :
Govt land.

Part - 4

(1) Plot number within notification boundary in village Sasti :
Govt land.

Boundary description:

Part – 1

A – B : Line starts from Point 'A' near Plot Number 475 of village Gowari and passes along the outer boundary of land already acquired for Sasti Opencast Mine and meets at Point 'B' near Plot Number 470.

B – C : Line starts from Point 'B' then passes along the North boundary of Plot Numbers 352, 351 (Part) of 348 (South boundary of already acquired land for Sasti Opencast Mine) and meets at Point 'C'.

C – D : Line starts from Point 'C' and passes along West boundary of land already acquired for Sasti Railway Siding then passes through Plot Numbers 348, 349, 350, 365 & 366 and meets at Point 'D'.

D – E : Line starts from Point 'D' and passes along West boundary of already acquired land for Sasti Railway Siding, then passes through Plot Numbers 369, 370 (Part), 378 (Part) and meets at Point 'E'.

E – F : Line starts from Point 'E' and passes along the West boundary of Plot Number 378 and meets at Point 'F'.

F – G : Line starts from Point 'F' and passes along the South boundary of Plot Numbers 371 and 373 and meets at Point 'G'.

G – H : Line starts from Point 'G' and passes along the outer boundary of Plot Numbers 373, 372, 361, 359 and 464 and meets at Point 'H'.

H – I : Line starts from Point 'H' and passes along the outer boundary of Plot Numbers 464, 469, Part of 470, 470 (Part), 471, 472, 473 and 474 and meets at Point 'I'.

I – J : Line starts from Point 'I' and passes along the outer boundary of Plot Numbers 474 , 475 and meets at Point 'J'.

J – A : Line starts from Point 'J' and passes along the outer boundary of Plot Number 475 and end at starting Point 'A' near Plot Number 475 of village Gowari.

Part – 2

K – L : Line starts from Point 'K' in village Gowari and passes in East direction along the South boundary of land already acquired for Sasti Opencast Mine and meets at Point 'L' of common village boundary of Gowari and Mathara.

L – M : Line starts from Point 'L' and passes along South-East boundary of land already acquired for Sasti Opencast Mine, then crosses the Kuccha Road and meets at Point 'M' on common village boundary of Mathara and Bhadangpur.

M – N : Line starts from Point 'M' and passes along East boundary of land already acquired for Sasti Opencast Mine and West boundary of Plot Numbers 171 and 172 in village Bhadangpur and meets at Point 'N'.

N – O : Line starts from Point 'N' and passes along the North boundary of land already acquired for Sasti Opencast Mine and North boundary of Plot Number 172 and meets at Point 'O' of common village boundary of Mathara and Bhadangpur.

O – P : Line starts from Point 'O' and passes along the East boundary of Plot Numbers 172 and 171 Part of Bhadangpur village and meets at Point 'P' of common village boundary of Mathara and Bhadangpur.

P – Q : Line starts from Point 'P' and passes along the North-East boundary of Plot Number 55 and meets at Point 'Q' in village Mathara.

Q – R : Line starts from Point 'Q' and passes along the North boundary of Plot Numbers 57, 58 and 59 and meets at Point 'R' on common village boundary of Mathara and Dhuptala.

R – S : Line starts from Point 'R' and passes along the East boundary of Plot Number 59 and meets at Point 'S' of common village boundary of Mathara and Dhuptala.

S – T : Line starts from Point 'S' and passes along the outer boundary of Plot Numbers 59, 61, 62, 63 (Part), 71 and meets at Point 'T' in village Mathara.

T – U : Line starts from Point 'T' and passes along the outer boundary of Plot Numbers 71, 69, 81 and 82, passes along the East boundary of Kaccha Road and meets at Point 'U'.

U – V : Line starts from Point 'U', crosses the Kaccha Road and passes along the South boundary of Plot Numbers 28, 29 (Part), 24 (Part), 23 and meets at Point 'V'.

V – W : Line starts from Point 'V' and passes along South boundary of Plot Numbers 23 & 22 (Part) and meets at Point 'W'.

W – X :	Line starts from Point 'W' and passes along the East boundary of Plot Number 17 and meets at Point 'X'.
X – Y :	Line starts from Point 'X' and passes along the North boundary of Plot Numbers 12, 13, 9 and 6 and meets at Point 'Y'.
Y – Z :	Line starts from Point 'Y' and passes along the outer boundary of Plot Numbers 6, 4, cross the Kaccha Road and meets at Point 'Z' on bank of the Nallah in village Mathara.
Z – A1 :	Line starts from Point 'Z' and meets at Point 'A1' on the bank of Nallah in village Mathara.
A1 – B1 :	Line starts from Point 'A1' crosses the Kaccha Road then passes along the South boundary of Plot Numbers 2, 3 and 10 and meets at Point 'B1'.
B1 – C1 :	Line starts from Point 'B1' and passes along East boundary of Plot Number 11 (Part) and meets at Point 'C1'.
C1-D1-E1 :	Line starts from Point 'C1' and passes along the outer boundary of Plot Numbers 11 and 12 then passes through Point 'D1' and meets at Point 'E1'.
E1 – F1 :	Line starts from Point 'E1' and passes along the outer boundary of Plot Numbers 15 and 16 and meets at Point 'F1' of common village boundary of Gowari & Mathara.
F1 – G1 :	Line starts from Point 'F1' and passes along the common village boundary and meets at Point 'G1' of common village boundary of Gowari & Mathara.
G1 – H1 :	Line starts from Point 'G1' and passes through Plot Number 370 in West direction, passes along South boundary of Plot Number 368 and meets at Point 'H1' in village Gowari.
H1 – I1 :	Line starts from Point 'H1' and passes in South direction through Plot Number 370, cross the road and passes along East boundary of Plot Number 379 and meets at Point 'I1'.
I1 – J1 :	Line starts from Point 'I1', passes along the South boundary of Plot Number 379 and Plot Number 378 (Part) and meets at Point 'J1'.
J1 – K1 :	Line starts from Point 'J1' and passes along the East boundary of land already acquired for Sasti Railway Siding and meets at Point 'K1'.
K1 – K :	Line starts from Point 'K1' and passes along the East boundary of land already acquired for Sasti Railway Siding and end at starting Point 'K' in village Gowari.

Part – 3

L1-M1-N1-	
O1-L1 :	Line starts from Point 'L1' near Nallah in village Sasti, passes through Points 'M1'- 'N1'- 'O1' and meets at Point 'L1'.

Part – 4

P1-Q1-R1 :	Line starts from Point 'P1' near Plot Number 305 on the bank of Nallah, passes in North-West direction along the bank of Nallah, passes through Point'Q1' and meets at Point 'R1' near Plot Number 208 on the bank of Nallah.
R1 – S1 :	Line starts from Point 'R1' passes in East direction crosses the Nallah and meets at Point 'S1'.
S1-T1-U1 :	Line starts from Point 'S1' passes in South-East direction along the bank of Nallah, passes through Point 'T1' and meets at Point 'U1'.
U1 – P1 :	Line starts from Point 'U1' crosses the Nallah and ends at starting Point 'P1'.

[F. No. 43015/03/2021-LA&IR]

RAM SHIROMANI SAROJ, Dy. Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली,11 जून, 2021

का.आ. 377.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अवर सचिव (प्रशासन III), कृषि मंत्रालय, विभाग। ए.एच. डेयरी और मत्स्य पालन, कृषि भवन, नई दिल्ली, निदेशक, क्षेत्रीय स्टेशन चारा उत्पादन एवं प्रदर्शन, पीओ-टेक्सटाइल मिल्स, हिसार- (हरियाणा) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पवन कुमार, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 53/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.05.2021 को प्राप्त हुआ था।

[सं. एल-42012/196/2015- आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 11th June, 2021

S.O. 377.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 53/2015) of the Central Government Industrial Tribunal-cum Labour Court- ll , Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Under Secretary(Admn.III), Ministry of Agriculture, Deptt. Of A.H. Dairying & Fishries, Krishi Bhawan, New Delhi; The Director, Regional Station Forage Production & Demonstration, PO-Textile Mills, Hissar- (Haryana) and Shri Pawan Kumar, Worker which was received along with soft copy office award by the Central Government on 17.05.2021.

[No. L-42012/196/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 53/2015

Registered on:-18.01.2016

Shri Pawan Kumar S/o Late Sh. Daya Kishan Verma, C/o Sh. Darshan Singh,
Labour Pleader & AR, H.No.339-P, Sector 16 & 17, Hissar-125001. ...Workman

Versus

1. Under Secretary (Admn.III), Ministry of Agriculture,
   Deptt. of A.H. Dairying & Fishries, Room No. 417 Krishi Bhawan, New Delhi-110001.
2. Director, Regional Station Forage Production & Demonstration,
   PO-Textile Mills, Hissar-125002 (Haryana). ...Respondents/Managements

AWARD

Passed on:-5.4.2021

Central Government vide Notification No. L-42012/196/2015-IR(DU) Dated 15.12.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Director Regional Station for Forage Production & Demonstration, Hisar-125002(HR) in not considering the request for appointment on compensation ground of the claimant/workman Sh. Pawan Kumar S/o Late Sh. Daya Kishan Verma, Hisar in place of his deceased father is legal & justified? If not, what relief the claimant is entitled to and from which date?"

1. Both the parties were put to notice and claimant/workman Pawan Kumar filed statement of claim, with the averment, that his father Sh. Daya Kishan Verma was employed as Filter Pump Driver on permanent basis who died on12.12.2007 due to an accident, leaving the family in die-harness. Due to acute financial crisis, mother of the claimant/workman Smt. Angoori Devi moved an application for his appointment on the basis of compassionate grounds but nothing is done by the respondent/management after the lapse of more than 6 years. Claimant/workman forced for sending demand notice under the ID Act, 1947 to the Assistant Labour Commissioner, Karnal on 25.05.2011. In spite of the specific direction by the Assistant Labour Commissioner to the respondent/management, it did not submit any satisfactory answer with respect to 5% quota of vacancy. Contrary to this, respondent/management appointed its near and dear, discriminating the claim of the claimant/workman. It is further alleged that due to non-cooperation and adamant approach of the respondent/management, Assistant Labour Commissioner Karnal closed the conciliation proceeding on 19.10.2015 and sent its report to the Ministry of Labour and Employment, New Delhi, resulting the present reference by the Central Government. It is therefore prayed that respondent/management be directed to appoint the claimant/workman on compassionate grounds in place of his facther and other benefits available within the Law.

2. Respondent/management has filed its reply, alleging therein that the statement of claim is not maintainable either in law or on facts of circumstances of the case. This Hon'ble Labour Court has got no jurisdiction to try and entertain the present statement of claim. No cause of action has accrued to the workman to approach this Hon'ble Labour Court as he is not affected by ay order of the respondent/management. The respondent/management is not an 'Industry' and is not engaged in commercial production of anything for profit rather it is a Scheme being operated and 100% funded by Central Government for the welfare of the targeted beneficiary group of dairy farmers and the State Government. The employees of Central Government are exclusively governed by the rules framed by the Central Government, mainly DoPT and also by other departments like D/o Expenditure, M/o Health, M/o Housing etc. and by no other rules whatsoever. The Director in-charge, Regional Station for Forage Production & Demonstration Hisar is not competent to consider the case of compassionate appointment as it requires consideration and decision in the department as per DoPT, Govt. of India's Rules on the subject. After the death of Sh. Daya Kishan Verma, father of claimant/workman on 12.12.2007 all the eligible monetary benefits were paid to the family of the deceased. The family is managing even for more than five years after the death of Sh. Daya Kishan Verma and it cannot be stated to be in a penurious condition needing immediate succor. The DoPT's guidelines vide OM No.14014/19/2002-Estt(D) dated 5.5.2003 clearly states that the maximum time a person's name can be kept under consideration for will be three years and after that, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again. After considering all the aspect by BBO if it is found that the case of applicant fulfills the indigence criteria, the case is considered by the competent authority. It is therefore prayed that this Hon'ble Court may be pleased to pass any order in favour of the answering respondent and against the claimant/workman in the interest of justice.

3. Claimant/workman Pawan Kumar has filed its rejoinder, alleging therein that respondent/management is an 'Industry' in the light of the judgment of **Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266,** decided by the Hon'ble Supreme Court. It is further alleged that respondent/management has not replied about the steps taken for considering the appointment of the claimant/workman denying the facts alleged in Para 3 to 9 of written statement with respect to DoPT. Claimant/workman further alleged that respondent/management has appointed so many persons on the basis of the approach and recommendation of the concerned-authority. It is further alleged that going though the appointments of the persons after 19.08.2009 on compassionate grounds it is clear that respondent has not submitted the details of the employed persons and condition prevailing about their appointments. The remaining facts alleged in the replication are same as alleged in the claim petition as such, it does not required to be repeated again.

4. In support of his case, the workman Pawan Kumar appeared in the witness box and has submitted his affidavit in evidence as Ex.WW1/A which is in the line of the facts alleged in the claim petition and has been cross-examined by the learned counsel of management Sh. V.K. Arya. Claimant/workman Pawan Kumar while proving his affidavit Ex.WW1/A has alleged that they are 6 brothers and sisters and all of them are married. He has further stated that he himself married in the year 2008 and his family has already received all the monetary benefits after the death of his father. This witness has stated that he has not registered his name with Employment Exchange and living with her mother in ancestral house. The claimant/workman has further stated that there are only one kanal possessed by his family.

5. Management has examined Sh. Prem Pal Singh, Director Regional Fooder Station, Hissar, who has filed his affidavit in evidence as Ex.MW1/A along with documents Ex.MW1/1 to Ex.MW1/14 as part of his statement and cross-examined by the AR of claimant/workman. This witness has admitted the date of death of the claimant's father Daya Kishan Verma on 12.12.2007 and application submitted by the mother of the claimant/workman on 3.8.2009 for appointment on compassionate grounds. As per Prem Pal Singh, appointing authority is a Ministry of Agriculture instead of Director, Hissar. He has further stated that no reply has been given by the Ministry to the mother of claimant/workman Pawan Kumar with respect to his appointment on compassionate ground as per his knowledge. This witness has denied any appointment by the Ministry in the respondent/management at Hisar. According to this witness, appointment relates with the direction given by the CAT Cuttack Bench as well as CAT Chandigarh. According to this witness Regional Fodder Station is not an industry under the ID Act.

6. Witness Prem Pal Singh of the respondent/management has further submitted his additional affidavit Ex.MW1/B and has been cross-examined by the AR of workman Darshan Singh. This witness has accepted that 4 persons have been selected by the respondent/management after his earlier cross-examination i.e. 26.10.2018 as per procedure but nothing is mentioned in the documents attached with the additional affidavit regarding the procedure, selection, name of their fathers, date of death and date of application of selected candidates. According to this witness, there is no specific provision for selection of such workmen on compassionate ground. This witness has expressed his inability to inform the number of persons who have been appointed from 25.05.2011 upto 2019. This witness has accepted that 4 persons have been selected by the Committee out of 88 persons along with consideration of the workman who is being not selected.

7. I have heard Sh. Dardhan Singh, AR for the claimant/workman and Sh. V.K. Arya, Ld. Counsel for management and have gone through the records carefully as well as written submissions made by both the parties.

8. Before entering into the merit of the case, it will be pertinent to mention those facts which are either admitted by the parties or proved by the documentary evidence beyond any doubt. The facts relating to the date of joining of the claimant's father Daya Krishan Verma, date of his death, date of submission of the application by mother of the claimant/workman on 3.8.2009 and non-selection of the claimant/workman after consideration by the Committee on 28.01.20109 out of 88 applicants. It is also not disputed that last meeting of the Committee took place on 28.01.2019 out of which 12 persons are selected on priority basis out of 88 persons on the basis of criteria made by the Committee. Thus, it is admitted facts that the application of the claimant/workman submitted on 3.8.2009 is finally considered on 28.01.2019 i.e. after more than 10 years.

9. Learned AR of the claimant/workman contended that the aforesaid meeting of Committee for consideration of the 88 candidates eligible for consideration on compassionate grounds is conducted to save the skin of Ministry after the conclusion of the evidence of this case. Learned AR further argued that object of the Scheme of the compassionate ground has been overlooked by the Ministry just to avoid the claim of the claimant/workman for posting in compassionate ground. According to the AR of the claimant/workman application of the claimant/workman should have been decided within the span of one year in pursuance of the Department of Personal and Training O.M No.14014/6/94-Estt(D) dated October 9, 1998 or it should have been considered by the subsequent O.M. No.14014/19/2002-Estt(D) dated 5.5.2003, in which three years time has been prescribed for the Ministry for consideration of the compassionate appointment. Thus, consideration of claimant's application after the laps of more than 10 years by respondents is unjust and illegal.

10. Learned counsel of the management Sh. V.K. Arya contended that delay is not intentional instead there were no vacancy in relevant period for consideration of the compassionate appointment by the Committee because it is subject to the availability of a clear vacancy within the prescribed 5% quota. Learned counsel further argued that the time limit of three years has been withdrawn by virtue of the O.M. No.14014/19/2002-Estt(D) dated 5.5.2003 and subsequent time limit came to an end by virtue of O.M. No.14014/3/2011-Estt(D) dated 26.07.2012 in which it is prescribed that any application for compassionate appointment is to be considered without any time limit and it is taken on merit on each case. Thus, according to the learned counsel of the management, time limit for consideration of the application of the respective candidates has been withdrawn by the O.M. No.14014/3/2011-Estt(D) dated 26.07.2012 and in pursuance of the availability of 5% quota of vacancy, the appointment of claimant/workman is considered by the Committee along with other candidates but unfortunately he could not be selected due to the norms settled by the Committee. Learned counsel further argued that it is not only the claimant/workman but more than 70 persons could not be selected on merit hence, it is wrong to say that selection was neither impartial nor within the reasonable time as such, claimant/workman is not entitled for any relief as is prayed through this claim petition.

11. The core issue for consideration in the light of the reference is legality and justification of non-consideration of claimant/workman Pawan Kumar for such a long time. Undisputedly, the application of the claimant/workman is considered after the lapse of more than 10 years i.e. 28.01.2019 and he could not be selected by virtue of the norms prescribed by the Committee.

12. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a selection committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies. Obviously, therefore there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, upto the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable. Further where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

13. In fact, compassionate employment is given solely on humanitarian grounds with the object of providing succor to employees' family to imply over sudden financial crisis. The Hon'ble Supreme Court while considering the series of judgment has came to the conclusion that concept of compassionate appointment is recognized as an exception to the general rule governing employment in public servant garb out in the interest of justice. The scheme/policy provided for such appointment could be binding on both employer and employee. The Hon'ble Supreme Court while dealing with the case of ***Bhawani Parshad Vs. Union of India & Oths., 2011(4) SCC page 209,*** has held that while considering the claim of compassionate appointment certain factors are to be bear in mind and observe in Para 2 of the judgment as follow:-

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a pubic authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition or the deceased/incapacitated employee's family at the time of this death or incapacity as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

In view of the judgments of the Hon'ble Apex Court and principles laid down therein, it is clear that the employer is within its power to laid down a policy for compassionate employment. It has to strictly adhere to such policy though, compassionate appointment in a exception to general rule, power to the Government or Public Authority to frame policy to offer the compassionate appointment expected by the Court in the interest of justice.

14. Next question which arises for consideration is with respect to the considering of the employment of the claimant/workman in pursuance of the policy and time frame mentioned in O.M No.14014/6/94-Estt(D) dated October 9, 1998 and O.M. No.14014/23/99-Estt(D) dated December 3, 1999. As per above mentioned OM, the application of the claimant/workman has to be considered within one year time limit and in case of non-availability of prescribed 5% quota it has to be extended for one year for such deserving candidates if Committee finds it in its scrutiny. The maximum time a persons name can be kept for consideration of compassionate appointment is prescribed three years subject to the condition of the prescribed Committee as reviewed and certified the penuries condition of the applicant at the end of the first and second year. This OM further states that after three years if compassionate appointment is not possible to offer to the applicant its case will be finally closed and will not be considered again. Thus, in pursuance of the O.M No.14014/6/94-Estt(D) dated October 9, 1998 and O.M. No.14014/23/99-Estt(D) dated December 3, 1999, the claim of the claimant/workman has to be considered firstly within one year and subsequently within three years but there is nothing on record to prove that application of the claimant/workman has been considered or scrutinized for extension of one, two or three years by the Committee finding it to be deserving. It is also relevant that if the case of the claimant/workman was not considerable or deserving then it should be rejected after the lapse of

three years as per the above mentioned O.M No.14014/6/94-Estt(D) dated October 9, 1998 and O.M. No.14014/23/99-Estt(D) dated December 3, 1999 and information has to be given to the claimant/workman. Learned counsel of the respondent/management contended that the application of the claimant/workman could not be considered within the span of three years from the date of submission as is prescribed in the OM dated 10.09.1998 and 03.12.1999 in absence of availability of 5% quota prescribed for the purpose. Learned counsel of the respondent/management while placing reliance in the case of ***State Bank of India & Ors. Vs. Raj Kumar, 2010, SC page 86,*** has contended that the application of the claimant/workman is considered in the Scheme and Rules which was prevalent at the time of the consideration of the application and not the Scheme that was in force earlier when the application was made. Thus, there is no any illegality or any irregularity in considering the claim of the claimant/workman in pursuance of the Scheme and Rules. According to the learned counsel of the respondent/management, none of the applicants under the Scheme has vested right the Scheme i.e. in force at the time of the consideration is taken into account and claimant/workman could not be selected on criteria fixed by the Committee itself.

15. Learned AR of the claimant/workman contended that the argument advanced by the learned counsel for the respondent/management is not relevant in the light of the subsequent judgment of the Hob'ble Supreme Court in the case of ***Bhawani Parshad(supra)*** in which similar question has considered before the Apex Court. The Hon'ble Supreme Court has held that application for compassionate appointment has to be preferred without any undue delay and has to be considered within the period of reasonable time as per Rules and Scheme applicable at relevant time. The Hon'ble Supreme Court is of the opinion that in case an application is made by the dependant belatedly or is considered after inordinate delay, basic requirements of meeting the minimum crisis becomes redundant. Thus, it may be observed that the selection of the claimant/workman is not considered within the stipulated period in pursuance of the O.M No.14014/6/94-Estt(D) dated October 9, 1998 and O.M. No.14014/23/99-Estt(D) dated December 3, 1999 within the span of one, two or three years instead it is considered after 10 years that to on the basis of Rules and Scheme formulated by the Committee at that time. Thus, it may be observed that action of the respondent/management in not considering the request of the claimant/workman on compassionate ground in place of his deceased father within stipulated time is illegal and unjust. This view find support from the judgment of Full Bench of Hon'ble Punjab & Haryana High Cout in the case of ***Krishna Kumari Vs. State of Haryana & Ors., 2012(2) RSJ page 473.***

16. There is another aspect to consider the case, which fortifies above conclusion of this Tribunal. The documents filed by the claimant, received through Right to Information Act reveals that numbers of person appointed by the Zonal Director or Senior Administrative of per serving under the Ministry. Sh. Amiya Kumar, Sumant Kumar, B.C. Sudhish, B.B. Srijeet, Sudhish Kumar Sakumaron, Miss Mamta Singh Rana, Giresh Mohan, Deepak Chandra, Srimati Jhualata Jena are appointed on basis of compassionate ground between 2009 to 2017. Learned counsel of management contended that their appointment is done in pursuance of the order of Labour Court or Central administrative Tribunal but except Srimati Jena all the above mentioned appointment is done without any order of any competent Court. This, it is evidence that management of version of non-availability of vacancy has no force. I am of the view that application of the claimant Pawan Kumar is dealt in biased manner and conduct of the officials of concerned Ministry is highly deplorable in given circumstances.

17. Next question which remains for consideration is whether this Tribunal is competent to give relief claimed by the applicant/workman in his claim petition. Learned counsel of the respondent/management contended that this Tribunal has got no power to give direction for appointment to the claimant/workman on compassionate grounds and it can merely direct consideration of claim of such an appointment in the light of the judgment of the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India Vs. Mrs. Asha Ramchandra Ambekar & Ors. JT 1994(2) SC 183*** and in ***Himachal Road Transport Vs. Shri Dinesh Kumar, 1996, SCC(4) Page 560.*** Learned counsel further contended that the case of the claimant/workman has been already considered by the authorized Committee of the Ministry vide its Order dated 28.01.2019 and he could not be selected in the terms and conditions stipulated for the selection of 88 candidates. Learned counsel of the respondent/management while placing reliance in the case of ***Civil Appeal No.2206 of 2006 dated 5.4.2011 Local Administration Department Vs. M. Selvanayagam, @ Kumaravalu***, contended that application of the claimant/workman has become out of consideration as an appointment made after many years after the death of the employee or due to the financial resources available could be directly confrontation with Article 14 and 16 of the Constitution of India and hence quit bad and illegal.

18. Going through the judgment of the Hon'ble Apex Court as mentioned above and case law relied by the learned AR of the workman namely ***Krishna Kumar Vs. State of Haryana & Others(supra)***, this Tribunal is of the considered opinion that this is a case in which consideration after inordinate delay by respondents basic requirement of meeting the immediate crisis has become redundant and consideration of application after number of years could be beyond principle accepted by the Aped Court in so many decision. In such circumstances, it would be difficult to accept the exception of the general rule made as envisaged by Article 14 and 16 of the Constitution of India. In the above mentioned circumstances an case laws of Hon'ble Supreme Court, it is not possible to pass a order for appointment of claimant Pawan Kumar on compassionate ground or

for reconsideration in spite of the facts that non-consideration of the application of claimant for such long time is illegal and unjustifiable. Hence, award is answered accordingly.

19. Let copy of this award be sent to the Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 11 जून, 2021

का.आ. 378.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रभारी अधिकारी, बीर धनतूरी, सैन्य फार्म, अंबाला (हरियाणा) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री भजन सिंह पुत्र बंत सिंह पुत्र श्री आर.के. सिंह परमार, महासचिव, पंजाब। इंटक २११-एल, बरारी पीओ प्रताप नगर, नंगल बांध, जिला- रूपनगर, (पीबी) के माध्यम से कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2,चंडीगढ़ के पंचाट (संदर्भ संख्या 23/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.05.2021 को प्राप्त हुआ था

[सं. एल-14012/20/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th June, 2021

S.O. 378.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2014) of the Central Government Industrial Tribunal-cum Labour Court-ll, Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Officer Incharge, Bir Dhanturi, Military Farm, Ambala (Haryana) and Shri Bhajan Singh S/o Bant Singh C/o Shri R.K. Singh Parmar, General Secretary, Pb. INTUC 211-L, Brari PO Partap Nagar, Nangal Dam, Distt. Rupnagar (PB), Worker which was received along with soft copy office award by the Central Government on 12.05.2021.

[No. L-14012/20/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No. 23/2014

Registered On:-12.09.2014

Shri Bhajan Singh S/o Bant Singh C/o Shri R. K.Singh Parmar, General Secretary,
Pb. INTUC 211-L, Brari PO Partap Nagar, Nangal Dam, Distt. Rupnagar (PB) ...Petitioner

Versus

The Officer Incharge, Bir Dhanturi, Military Farm, Ambala (Haryana). ...Respondent

AWARD

Passed On:-05.04.2021

Central Government *vide* Notification No.L-14012/20/2014-IR(DU) Dated 29.08.2014, under clause (d) of Sub-Section (1) and sub-Section (2A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial Dispute related to the Bir Dhanturi, Military Farm, Ambala (Haryana) for adjudication to this Tribunal:-

"Whether the action of the management of officer incharge, Bir Dhanturi Military Farm. Ambala (Haryana) in terminating the service of Shri. Bhajan Singh W.E.F. 11.06.2013 is valid just and legal? To what relief the concerned workman is entitled to and from which date?"

1. In brief, the facts are that the workman/petitioner was served the Military Farm w.e.f. 01.05.1991 till 19.03.1999, as an unskilled Mazdoor and was illegally retrenched and the settlement was reached between the parties before the Hon'ble Industrial Tribunal-cum-Labour Chandigarh on 25.08.2010. Moreover, in the terms of said settlement, workman/petitioner was appointed afresh w.e.f. 01.11.2010 and had been working continuously till 10.06.2013 A.N. Furthermore, it is stated in the claim statement that when he went to attend the duty as usual on 11.06.2013 at the residence of Mr. Ravi Jain, the then Manager, he abused the workman in filthy language and was severely beaten up by Manager which caused injuries on the body of workman. The purpose for abusing and beating is best known to the said Manager who asked workman not to attend the duty from today and onwards. Thereafter, it is alleged that workman lodged a complaint against the said Manager in the Police Station. Prior to the illegal termination workman made several requests to allow him to join duty but he was not allowed to join duty and was told that his service is not required. It is stated that before the illegal termination of workman, there was no complaint against his work and conduct however, his services suddenly terminated by the said Manager even after no fault of him. It is alleged in the claim statement that no chargesheet, enquiry and show cause notice was served upon him which is against the provisions of natural justice. It is stated that the junior to the workman had been retained in service i.e. Shri. Ram Lal S/o Bhahru and so many others. Workman rendered more than 240 days of continuous service in each completed years of service. It is further alleged that neither a notice of one month was given to the workman nor he was paid wages for one month in lieu thereof which renders his termination illegal, void and bad in law under Section 25/F(a) of the Industrial Disputes Act, 1947. It is stated that the action of the management in terminating the service of workman is an unfair labour practice. It is further alleged, that workman is in the search of the job from the date of his illegal termination but is still unemployed. It is therefore, prayed that the retrenchment/termination of the workman are required to be quashed and set-aside and the workmen may kindly be ordered to be re-engaged in service with full back wages.

2. Management has filed its written statement denying the contents of claim petition. It is alleged that reference is not maintainable before this Hon'ble Tribunal as the workman is not covered under the Industrial Disputes Act, 1947. It is stated that the workman was neither engaged against the regular post nor was he engaged for any regular work. Moreover, he was engaged purely on daily rate basis as the instructions of the Army Headquarters Letter No.A/88043/Q/MF-2 dated 31.07.2007. it is further stated that the, respondent-Military Farm is involved in sovereign functions in as much as the main function of Military Farm is to produce, process milk and milk products under hygienic and safe condition and deliver these to the Armed Forces in the same condition. Furthermore, it is alleged that Military Farms is one of the oldest functional Corps of the Indian Army. Military Diary Farms own their birth to peculiar conditions and logistic needs of British Army in India after 1880 A.D. Furthermore, the role of Military Farm is safe delivery of dairy products to Consumer-Officers, troops and their families located in plains as well as on hills. Since independence, Respondent-Military Farm have given good account of their service during hostilities and met the mild fodder needs of fighting forces in most of the operational areas. It is stated that the Military Farm Bir Dhanturi, was a separate entity till its merger with the Military Farm Ambala on 31.3.2005. Management has stated that in the year, 1999, the workman has been given all the compensations along with other workers, working with the Military Farm Bir Dhanturi as the Govt. Of India stopped the engagement of the casual workers in their establishment. The workman received a sum of Rs.12068/- as the retrenchment compensation. Moreover, the workman was engaged on 1.11.2010, at the Bir Dhanturi, Section of the Military Farm Ambala Cantt. Purely on daily basis, in terms of letter of the of the Army HQ (Annexure R-1) and kept working till 11.6.2013 and thereafter the workman never turned up for the work, as such no cause of action arose in favour of the workman to file the present demand notice. The workman was paid the retrenchment compensation before his retrenchment in the year 1999, vide Annexure R-2. Moreover, it is stated that the workman was never appointed on regular basis, was engaged purely on daily basis, the question of illegal termination does not arise. Furthermore, it is stated that the management never violated any provision of Industrial Act, 1947 and workman was never terminated by the management.

3. In support of his case, workman Bhajan Singh has examined himself and filed his affidavit as Ex.WW1/A, reiterating the case as set out in the claim petition. He has been cross-examined by the learned counsel of management Sh. Arun Batra. He has stated that appointment letter was not issued to him by the management and he was assigned the work of cultivation, watering and washing in the farm of respondent/management. This witness has denied the suggestion made by the learned counsel of the management that he left the job on his own. This witness has further stated that management used to issue salary through cheques payable to his bank account. It is pertinent to mention that learned counsel of management has not asked any question with respect to the dispute between Manager of the Farm Mr. Ravi Jain, resulting the dispute between the parties. It is also relevant to mention that Mr. Ravi Jain has not been examined by the management for the reasons best known to it.

4. On the other hand, respondent-management has examined Col. Parveen, Officer Incharge, Military Farm, Ambala, who has proved his affidavit as Ex.MW1/A along with documents attached with the written statement as Annexure R-1 and R-2. During the course of cross-examination, this witness has accepted that workman was employed as daily wager and he left the job without any information as such, his conduct does not come within the purview of misconduct. He has further stated that workman left the job on his own on 11.06.2013 and management has not issued any show cause notice, or letter to the workman to join his work. According to this witness, neither any show cause notice was issued to the workman nor any retrenchment compensation was given to the workman because he had left his job on his own. This witness has also admitted that respondent-Military Farm has been finally closed after 2013.

5. I have heard the learned AR of the workman Sh. R.K. Parmar and learned counsel of the management Sh. Arun Batra and perused the file carefully.

6. Before entering into the real controversy between the parties, it will be relevant to mention those facts which are admitted between the parties. It is not disputed that workman was employed from 01.05.1991 to 19.03.1999 as unskilled majdoor and after his earlier retrenchment, a settlement was raised between the parties before Industrial Tribunal-cum-Labour Court on 25.08.2010. It is also not disputed that in terms of the settlement, workman was appointed afresh on 01.11.2010 and worked continuously till 10.06.2013. There is no dispute between the parties that workman was neither given any show cause notice nor any enquiry is conducted against him as well as he was not paid any retrenchment compensation at the time of alleged retrenchment/termination. Thus, it is clear from the evidence on record as well as admitted facts that workman was in the employment of the management from 01.11.2010 to 10.06.2013.

7. The first contention raised by the learned counsel of the management is that the claimant does not come within the purview of "workman" as defined under Section 2(S) of the Industrial Disputes Act, 1947 because he was employed as daily wager. In this connection, reference can be made to the decision of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***
>
> It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

8. Second contention of the learned counsel of the management relates with the jurisdiction of the Tribunal. According to the learned counsel of the management, this Tribunal has got no jurisdiction to decide the reference because management is a sovereign body working under the Government of India. According to the learned counsel, the jurisdiction lies with the Central Administrative Tribunal at Chandigarh. I find no force in the light of the judgment of the Hon'ble Supreme Court in the case of **Telecom District Manager & others. Vs. Keshab Deb.(Civil Appeal No.3324 of 2008 arising out of SLP (Civil) No.9494 of 2004-decided on 6/5/2008** where a driver/casual labour on daily wage basis, serving in the Directorate of Telecommunicaitons at Dimapur, had filed an application before the Central Administrative Tribunal, Gauhati by the workman, challenging the order of his termination by his employer and the Gauhati Bench of CAT had passed an order, holding the termination order to be illegal. Before the Apex Court, the department/employer had raised the contention as regards jurisdiction of the CAT. The Hon'ble Supreme Court while holding that an employee who claims himself to be a workman, will have a right of election in the matter of choice of forum either before Industrial Tribunal or before Central Administrative Tribunal, observed in para 14 as under:-

> ***"In a case of the present nature where inter alia a employee maintains a writ petition not only on the ground of violation of equality clause enshrines under Article 14 of the Constitution of India but also on the ground of violation of provisions of the Industrial Disputes Act, 1947, he has an option to choose his own forum. Section 28 of the Administrative Tribunal Act, 1985 does not bar the jurisdiction of the Central Administrative Tribunal. It saves the jurisdiction of the Industrial***

Tribunal. An employee who claims himself to be a workman, therefore, will have a right of election in the matter of choice of forum....."

9. Vital question which arises for consideration is whether management does not come within the definition of "Industry" as is argued by the learned counsel of the management. It the worthwhile to mention here that the definition of 'industry' as provided under Section 2(J) of the Act, is in two parts. In its first part it means any business, trade, undertaking, manufacture or calling of employers. This part of definition determines an industry by reference to occupation of employers in respect of certain activities. These activities are specified by five words and they determine when an industry is and what the cognate expression 'industrial' is intended to convey. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. This part gives extended connotation. If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part, takes in the different kinds of activity of the employees mentioned in the second part. But, the second part alone cannot define 'industry'. An industry is not to be found in every case of employment or service. By the inclusive part of the definition the labour force employed in an industry is made an integral part of the industry for purposes of industrial disputes although industry is ordinarily something which employers create or undertake. Before the work engaged in by an employer can be described against industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services. Where an activity is to be considered as an industry, it must not be casual but must be distinctly systematic and the wok for which workmen are employed must be productive and the workmen must be following an employment, calling or industrial avocation. The word 'industry' must take its colour from the definition and that it discloses that a workman is to be regarded as one employed in an industry if he is following one of the vocations mentioned in conjunction with his employers engaged in the vocation mentioned in relation to the employers."

10. Learned AR of the workman has submitted that services of the workman has been terminated with oral order by the Manager of the Farm Mr. Ravi Jain and he was not allowed to render his service from 11.06.2013 as is alleged in the claim petition and affidavit of workman filed as evidence. Contrary to this, learned counsel of the management Sh. Arun Batra contended that it is not a case of retrenchment/termination instead workman Bhajan Singh had left the job at his own and did not turn up again without any reason. Thus, the fundamental point regarding the dispute relates to the abandonment of service by the workman or retrenchment/termination by the officials of the respondent-management. Learned AR of workman has drawn my attention towards the judgment of Hon'ble Delhi High Court in the case of ***Fateh Chand Vs. Presiding Officer, Labour Court, arising out of WP/Writ Petition No.758/2007, decided on 16.01.2017,*** and contended that nothing is brought on record by the management to prove that workman has left the job at his own. The Hon'ble Delhi High Court in the case of Fateh Chand(supra) has held in Para 8 as follows:-

"It is also settled legal position that abandonment of service is different from absenteeism. Abandonment of service is the voluntarily relinquishment of one's services with the intention not the resume the same. It is a matter of inference to be drawn from the facts and circumstances of each case and mere absenteeism for a continuous period does not mean that the employee has abandonment cannot be attributed to the employee without there being sufficient evidence. On the failure to report for duty, the management has to call upon the employee and if he refuses to report, then an enquiry is required to be ordered against him and accordingly action taken. In the absence of anything placed on record by the petitioner management; no presumption against the respondent can be drawn. No enquiry in this case was set up by the petitioner management and even no letter was sent by the management to the respondent workman calling upon him to resume his duty."

11. It is also no more res integra that even in a case of unauthorised absenteeism or to prove abandonment of service on the part of the worker, the management must place on record necessary material to prove that enough efforts were made by it to call upon the workman to return back on his duty and the workman has shown his clear reluctance for the same. Here it would be relevant to refer to the judgment of the Apex Court in the case of ***Scooters India Ltd. Vs. Mohammad Yaqub, 2001(1) SCC61*** where the workman when reported for duty was not allowed to join and according to the standing orders automatically terminated, the Court held that it was not a case of absenteeism but retrenchment.

12. No doubt, either party has not adduced any cogent evidence in respect of the contention raised in the claim petition as well as written statement. The workman has not produced any evidence to substantiate that he was not allowed to discharge the duties in the Farm of respondent-management. At the same time, respondent-management has not issued any notice in writing asked the workman to report for duty, if he remained unauthorised absent or absent himself from duty as contended by the learned counsel of management. In fact, there is no correspondence between the workman and management in respect of service condition of the workman. Learned AR of the workman has placed reliance in the case of ***Kali Ram Vs. Presiding Officer and Anr. Decided by the Hon'ble Punjab & Haryana High Court in Writ Petition No.8898/1994(OM) dated 30.11.2015, 2017 LLR 95,*** in which it is held tht notice by the management is an inordinate part for clearing that

the workman has absented himself without any reason. Hon'ble Punjab & Haryana High Court in the case of Fateh Chand(supra) has held that management has to prove on record sufficient material to show that employee has abandoned the services and abaodonment cannot be attributed to the employee without there is sufficient evidence. As per the Hon'ble High Court, in such a situation, the contention of the respondent-management that the workman has abandon the services is not acceptable because of non-issuance of show cause notice to join the service back to the workman. As per Hon'ble High Courts, management is under legal obligation to issue a show cause notice regarding joining of service to the workman. It is an admitted fact that management has not issued any show cause notice or any letter whatsoever for whereabouts of the workman as well as his joining in service. As per settled position, it is a matter of record to be drawn on the basis of circumstances of each case. This Tribunal is of the considered opinion that nothing is expected in the given circumstances from the workman to prove that he has been restrained by the management as oral order of the concerned officer of the management. Contrary to this, management can prove his version by issuing a notice to the workman or making enquiry about his absent who was employed after one round of litigation before the Central Government Industrial Tribunal. To my mind, it is not the workman who has left the job of his own rather he was not allowed to work by the officials of the management on the basis of evidence on record.

13. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that workman was continuously in the employment of the management from 01.11.2010 to 10.06.2013 on regular basis. There is no show cause notice or memo issued to the workman by the management. It is relevant to mention that nothing is brought on record that workman was employed after his termination from service. The Apex Court in case of **"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya"** reported as (2013) 10 SCC 324 has held as under:-

"The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

16. Yet in another latest case of **Bholanath Lal and others v. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10.05.2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under :-

"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement

with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.

Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

17. Having regard to the legal position as stated above and admitted facts that Bir Dhanturi Militry Farm, Ambala(Haryana) has been finally closed as such, reinstatement of the workman is not possible. Yet, in another latest judgment i.e. ***District Development Officer Vs. Kanti Lal 2018 LLR 225*** while considering the question of reinstatement along with back wages of a daily wager, who have put two and a half years of service, the Hon'ble Apex Court granted a lump sum compensation of Rs.2.50 lac in lieu of reinstatement. It is pertinent to mention that workman has worked for two and half year of service in this case also so, a compensation of Rs.2.50 lacs will be appropriate to meet the end of justice. Award is passed accordingly.

18. Let copy of this award be sent to the Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 11 जून, 2021

का.आ. 379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य कार्यकारी अधिकारी छावनी बोर्ड, कसौली-173204, जिला-सोलन (हिमाचल प्रदेश) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री विशाल कुमार पुत्र संत राम, मकान नं. 02, छावनी। लाइन, ड्रम बार, कसौली, जिला-सोलन (एचपी), जेसी भारद्वाज, अध्यक्ष, एचपी-एआईटीयूसी, मुख्यालय के माध्यम से। सप्रून सोलन (हि. प्र.) के माध्यम से कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-ll,चंडीगढ़ के पंचाट (संदर्भ संख्या 32/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.05.2021 को प्राप्त हुआ था।

[सं. एल-13012/04/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th June, 2021

S.O. 379.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2015) of the Central Government Industrial Tribunal-cum Labour Court –ll , Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief Executive Officer Cantonment Board, Kasauli-173204, District-Solan(HP) and Shri Vishal Kumar S/o Sant Ram, House No. 02, Cantt. Line, Drum Bar, Kasauli, Distt- Solan (HP), through J.C. Bhardwaj, President, HP-AITUC, H.Q. Saproon, Solan (H.P.) Worker which was received along with soft copy office award by the Central Government on 17.05.2021.

[No. L-13012/04/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 32/2015

Registered on:- 2.9.2015

Vishal Kumar S/o Sant Ram, House No.02, Cantt. Line,
Drum Bar, Kasauli, Distt. Solan (HP), through J.C. Bhardwaj,
President, HP-AITUC, H.Q. Saproon Solan (H.P.). ...Workman

Versus

The Chief Executive Officer Cantonment Board,
Kasauli-173204, District-Solan (HP). ...Respondent/Management

AWARD

Passed on:-09.04.2021

Central Government vide Notification No. L-13012/04/2015-IR(DU) Dated 12.08.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of termination of services of Sh. Vishal Kumar S/o Sh. Sant Ram w.e.f. 9.3.2015 by the management of Cantonment Board, Kasauli is legal just and valid? If not, to what relief the workman is entitled to and from which date?"

1. Both the parties were put to notice and claimant/workman Vishal Kumar filed statement of claim, with the averment, that he was appointed as Safai-wala on 7.7.2014 and was drawing Rs.4900/- per month+Rs.1300/- grade pay+other allowances and remained continue till his illegal removal from the service on 9.3.2015 without any cogent reasons and justifications. The workman successfully and satisfactorily worked during the probation period and was deemed to have been confirmed on the completion of six months of service on the said post. The respondent/management terminated the services of the workman without complying with the provisions of Section 25-F of Act 14 of 1947. The workman was discharging his duties with utmost sincerity and honesty with all his devotion but suddenly his service was terminated on 9.3.2015 without any cogent reasons and justifications and that too against the rule of law as the order of imposition of penalty suffers with serious infirmity as the head of the institution deposed as witness in the preliminary enquiry in support of the charges against the workman. The workman has already retained the status of permanent employee in this Cantonment Board as he has rendered more than 240 days of service with the Cantonment Board and cannot be thrown out of institution in the manner and method adopted by respondent-management. The respondent-management has employed a new person against the prescribed norms, under Section 25-G and 25-H of the ID Act and had employed new hands. The respondent-management has committed gross palpable illegality and has engaged themselves in arbitrary action while terminating the service of workman on 9.3.2015. The termination is discriminatory and in violation of fundamental rights and right to equality in the matter of employment under Article 14 and 16 of Constitution of India. Neither charge sheet nor any enquiry was held against the workman as such, the workman comes under the definition of retrenchment and further under Section 2(OO) of ID Act which has been resorted without compliance of Section 25-F of the ID Act as no one month notice was served nor wages were paid in lieu of that and further no compensation was paid to the workman as per the provision of Section 25-F of the ID Act. It is therefore, prayed that impugned order of termination of the workman from service on 9.3.2015 and award reinstatement to the workman with full back wages, seniority and other consequential service benefits throughout with costs.

2. Respondent/management has filed its written statement, admitting the fact that the workman was appointed as Safaiwala on 7.7.2014 at the pay of Rs.4900/- + Rs.1300/- GP vide letter No.CBK/ESTT./8(9)-310 dated 7.7.2014 on a probation period of six months as required under Rule 6 of Cantonment Board Servant Rule 1937. The appointing authority may extend the period of probation by further period not exceeding one year for reason to be recorded in writing. It is denied that the workman was deemed to have been confirmed. During the probation period the conduct of the workman with his superior staff also remained unsatisfactory and reports regarding gross misconduct were received from Sh. Mahesh Kumar Safaiwala and Sh. Ashok Kumar Safaiwala in the office against the workman on 31.01.2015. As per Clause 3(II) of the appointment letter, it has explicitly been mentioned that during the period of probation services will be terminated by one month's notice by Chief Executive Officer on one side and the workman on other side or by depositing with the board one month's pay plus allowances in lieu thereof, except in case of misconduct of any discretion or unsatisfactory work, the

services will be terminated without any notice and without assigning any reason hence, his termination was absolutely correct as he was not liable further to continue in the present post. It is denied that workman was discharging his duties with sincerity ad honestly with all his devotion. The lapse committed but the workman points to the carelessness and casual attitude of the worker and such behavior is not expected from the probationer. The termination of the workman is as per law under the provisions of Cantonment Fund Servant Rules, 1937. It is therefore, prayed that the statement of claim of the workman may kindly be dismissed in the interest of justice.

3. The workman Vishal Kumar has filed its replication, stating the facts that respondent has not written any justification or cogent reason for exceeding the period of probation for one year of workman neither recorded anything against him. It is emphatically denied that any enquiry was held by the sanitary inspector against the workman and that any opportunity had been given at the relevant time. It is submitted that workman never committed any negligence and dereliction of duties at any time and stage as alleged by the management. However, no enquiry was held to prove the negligence at work by the workman. The remaining facts are same as alleged in the claim statement hence, need not to be repeated again.

4. In order to prove his case, workman Vishal Kumar has submitted his affidavit as Ex.WW1/A along with documents letter of appointment Ex.WW1/1, Letter of termination Ex.WW1/2, request application Ex.WW1/3 and letter Ex.WW1/4 and copy of notice issued to the workman by the Chief Executive Officer, Kasauli Ex.WW1/5 has been proved by the workman. The facts alleged in the affidavit is in the line of the claim petition. This witness has been cross-examined by the learned counsel of the management Sh. Vijay Attri. He has accepted that termination took place during the probation period after issuing a show cause notice by the management. He has further stated that neither any enquiry was conducted by the Sanitary Inspector nor enquiry report was submitted by the Chief Executive Officer. This witness has further stated that a letter was issued to him for submission of service book before receiving the notice dated 8.1.2015.

5. Management of Cantonment Board has submitted affidavit of witness Heera Singh Rana Ex.MW1/A in support of the facts alleged in the written statement. This witness has been cross-examined by the AR of workman and during the course of cross-examination, he has admitted that he was appointed as enquiry officer by the Chief Executive Officer of the Cantonment Board and stated that charge-sheet along with the complaints made by the co-worker Mahesh Kumar and Ashok Kumar were attached with the charge-sheet. This witness has denied the suggestion made by the AR of the workman that he has not given workman an opportunity to defend himself and produce evidence before him. This witness has clearly admitted that claimant/workman was terminated because he disputed with the companions and copy of the enquiry report was not given to the workman. Thus, the evidence adduced by this witness, it is clear that either charge-sheet nor the copy of the complaint were given to the workman before the alleged enquiry or copy of the enquiry report is submitted to him before the alleged termination by the Chief Executive Officer of the Cantonment Board.

6. I have heard Sh. J.B. Bhardwaj AR of workman in the absence of management as well as his counsel and perused the file, evidence and documents submitted by both the parties.

7. Learned AR of the workman contended that termination of the workman is done without complying the provisions of the ID Act as well as terms and conditions mentioned in the appointment letter. Learned AR further contended that the enquiry alleged to be conducted was behind the back of the workman and he was not given opportunity to defend himself or produce evidence to prove his innocence. Learned AR further contended that the copy of the termination letter Ex.WW1/2 is ample proof in itself that termination is not simplicitor instead it is stigmatic mentioning the misconduct of the workman as such, the termination order is passed not only against the settled position of law but without giving reasonable opportunity to the workman to defend himself. Learned AR further contended that if the workman is to seek employment elsewhere, any employer will ask the workman to provide the copy of the termination letter dated 9.3.2015 and that the said letter contain finality which arrived at before the departmental enquiry those findings will amount staking and will come in the way of his career. Learned AR has placed reliance in the case of ***Dipti Prakash Benerjee Vs. S.N. Boss National Centre for Basic Sciences Calcutta and Others, 1999 LLR 47 Supreme Court*** as well as in the case of ***Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar, 2008 LLR 428, Supreme Court,*** in respect of his contention and alleged illegal termination by the Cantonment Board.

8. From the perusal of the pleadings of both the parties and evidence filed by both party, it is not disputed that claimant/workman was appointed as Safaiwala in the establishment from 07.07.2014 and served till his termination on 9.3.2015 and he has been terminated by the authority of the Cantonment Board, Kasauli vide letter dated 09.03.2015. It is also undisputed that initially claimant/workman was appointed for 6 months but subsequently his probation is extended for further 6 months due to unsatisfactory performance. The appointment letter Ex.WW1/a denotes that in the case of termination, one month notice by Chief Executive Officer has to be given or one month pay plus allowance in lieu thereof has to be given to the workman except in the case of misconduct of any description or unsatisfactory work services will be terminated without any notice and without assigning any reason in the light of the provision incorporated in Rule 8 of Cantonment Fund

Servant Rule, 1937. It appears that due to complaint by co-Safaiwala namely Mahesh Kumar and Ashok Kumar, alleged enquiry is marked and on the basis of the enquiry report, workman/claimant Vishal Kumar has been terminated without giving any notice or one month salary in lieu of notice in pursuance of the condition mentioned in the appointment letter.

9. On the basis of the facts alleged in the claim petition as well as written statement, the first question arises as in what circumstances the termination of probationer services can be said to be founded on misconduct and any of the circumstances could it be said that the allegations were only the motive. Second question which require for consideration relates as to what an order of termination of a probationer be expressed as a stigma. Lastly can a stigma be referred back to in the order of termination.

10. For critical analysis of the termination order attached as Ex.WW1/2, the following paragraphs of the termination order is relevant which is as under:—

> ***WHEREAS complaints from the senior employees were received in this office with regard to your gross misconduct with your superior. AND WHEREAS an inquiry to inquire into the mater was conducted in person on 12.2.2015 by the Sanitary Inspector in the office of Cantonment Board, Kasauli, On perusal of all the records/facts & report of the S.I. placed before the undersigned, it is revealed that your conduct with your superior staff is not satisfactory. Therefore, your work as well as your conduct during the probation is not satisfactory."***
>
> ***NOW THEREFORE, the undersigned in exercise of the powers conferred under Rule 8 of Cantonment Fund Servant Rule, 1937 as well as following the terms of appointment letter para-3, your services from the Cantonment Board, Kasauli is hereby terminated with immediate effect."***

11. The Hon'ble Supreme Court as well as Hon'ble High Court in a long line of decisions has held that where an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categories or classify mostly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service.

12. Learned counsel further contended that the alleged enquiry against the claimant/workman was held behind the back of the employee and order of termination founded on misconduct is bad in Law and liable to be set aside. The question which arises for consideration is whether alleged enquiry is conducted behind the back of the claimant/workman or workman was given reasonable opportunity to defent himself is a question of fact. It is pertinent to mention that the witness of management Heera Singh Rana has stated in his cross-examination that he was appointed as enquiry officer by the Chief Executive Officer of the Cantonment Board and he has summoned the complainants Mahesh Kumar and Ashok Kumar. This witness has further stated that workman was terminated because he quarreled with the companions. As per this witness, charge-sheet was not given to the workman. Contrary to this, he has also summoned Mahesh Kumar and Ashok Kumar were attached with the charge-sheet. It appears that from the cross-examination of the management witness Heera Singh Rana that the aforesaid enquiry was in the form of preliminary enquiry and neither any charge-sheet was prepared nor submitted to the workman before calling for his explanation with respect to the misconduct as is alleged by the co-workers Mahesh Kumar and Ashok Kumar. The facts alleged in the written statement of the management of Cantonment Board, Kasauli reveals that the workman has been cross-examined and he had been given opportunity to cross-examine the complainants Mahesh Kumar and Ashok Kumar during the course of enquiry proceedings and on the basis of the enquiry report action was taken by the competent-authority. There is nothing in the form of preliminary proceeding conducted by the witness Heera Singh Rana with respect to statement and cross-examination of the complainant Mahesh Kumar and Ashok Kumar as well as workman on record. It is pertinent to mention that non-submission of the file of enquiry by the respondent-management before the Tribunal is ample proof that management has not conducted any impartial enquiry and if it was conducted in any way that was behind the back of the claimant/workman. The Hon'ble Supreme Court in the case of ***Bishan Lal Gupta Vs. State of Haryana(supra),*** has held that an ordinary enquiry by a show cause might be sufficient for the purpose of deciding whether the probationer could be continued. But where the finding regarding misconduct are arrived at without conducting a regular departmental enquiry, then the termination order will be vitiated. Similarly, in the case of ***Dipti Prakash Benerjee Vs. S.N. Boss National Centre for Basic Sciences Calcutta and Others(supra),*** relied by the learned AR of the claimant/workman the Hon'ble Supreme Court has held that the report of Committee is not sufficient and cannot be used for terminating the probationer workman without a proper departmental enquiry. As per the Hon'ble Supreme Court, if the termination order was based on the finding of the such enquiry is liable to be quashed because such findings must in law will be arrived at only in the departmental enquiry. Hon'ble Supreme Court in the case of ***Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar(supra),*** relied by the AR of the workman has held in Para 12 that mere holding of a preliminary enquiry where explanation is called for from the employee if

followed by an innocuous order of discharge may not be held to be punitive in nature but not when it is founded on a finding of misconduct. As per Hon'ble Supreme Court, if the enquiry results in finding of misconduct, the order of termination is based on that could be punitive and stigmatic.

13. In this connection, learned AR of workman has placed reliance in the case of ***Dipti Prakash Benerjee Vs. S.N. Boss National Centre for Basic Sciences Calcutta and Others(supra)*** as well as in the case of ***Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar(supra),*** contended that the termination order reveals that claimant/workman has been terminated due to his misconduct with superior staff as his conduct was not satisfactory. As per the learned AR of workman, the aforesaid termination order is stigmatic in nature as such, liable to be quashed because in the matter of the 'stigma', there is long line of judgments that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration. The learned counsel AR of workman has placed reliance in the cases of ***Samsher Singh Vs. State of Punjab, 1974(2) SCC 831, Ray, CJ,*** and ***Bishan Lal Gupta Vs. State of Haryana, 1978(36) FLR 429(SC).*** In the Seven Judge case in ***Samsher Singh Vs. State of Punjab(supra),*** observed that if a simple order of termination was passed, that would enable the officer to make good in other walks of life without a stigma. It was also stated in ***Bishan Lal Gupta Vs. State of Haryana,*** that if the order contained a stigma, the termination would be bad for the individual concerned must suffer a substantial loss of reputation which may affect his future prospects.

14. The aforesaid decision of the Hon'ble Supreme Court makes it clear that if the termination order is stigmatic then there should be a proper departmental enquiry. Undisputedly, for proper departmental enquiry show cause notice, explanation, charge-sheet, documents pertaining to the allegations has to be submitted to the erring employee and after taking explanation before recording the evidence of the witnesses of the management and due opportunity to cross-examine by the erring employee as well as opportunity of the defence to the claimant/workman are integral part of the departmental enquiry to find out the truth of the allegations mentioned in the complaint. So far as the present case is concerned, there is nothing on record which could be treated as departmental enquiry to prove the misconduct of the workman. Thus, the report of Heera Singh Rana, on the basis of which termination order dated 9.3.2015 is passed mentioning the misconduct of workman with superior staff is neither satisfactory nor reliable.

15. Having gone through the documentary as well as evidence of witnesses on record coupled with legal proposition discussed above, this Tribunal is of the considered opinion that impugned order of termination of the probationer is stigmatic and liable to be quashed and he is entitled for reinstatement with back wages till the date of reinstatement and continuity of service. Hence, management is directed to reinstate the workman in service with back wages within 6 months from the date of publication of the award. Award is passed accordingly.

16. Let copy of this award be sent to the Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 11 जून, 2021

का.आ. 380.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उप अधीक्षण बागबानी शाखा, भारतीय पुरातत्व सर्वेक्षण, कुरुक्षेत्र (हरियाणा), उप. अधीक्षण बागवानी, भारतीय पुरातत्व सर्वेक्षण, बागवानी, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और श्री एलिसो, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2,चंडीगढ़ के पंचाट (संदर्भ संख्या 2/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.06.2021 को प्राप्त हुआ था।

[सं. एल- 42025/07/2021- आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th June, 2021

S.O. 380.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/2014) of the Central Government Industrial Tribunal-cum Labour Court-2, Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Deputy Superintending Horticulturist Horticulture Branch, Archaeological Survey of India, District- Kurukshetra (Haryana); Dy. Superintending Horticulturist, Archaeological Survey of India, Horticulture, New Delhi and Shri Alyas, Worker which was received along with soft copy office award by the Central Government on 01.06.2021

[No. L-42025/07/2021 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. A.K. Singh, Presiding Officer

ID No. 2/2014

Registered on:-16.04.2014

Alyas S/o Yasin, Village Bheron, PO Mattar,
Tehsil Nahan, District Sirmour (Himachal Pradesh). ...Workman

Versus

1. Deputy Superintending Horticulturist Horticulture Branch,
Archaeological Survey of India, Shekh Chihli Tomb Thanesar, District Kurukshetra.

2. Dy. Superintending Horticulturist, Archaeological Survey of India,
Horticulture Division No.11, Safdarjung Tomb, New Delhi-110003 ...Respondents/Managements

AWARD

Passed on:-04.05.2021

1. The workman Alyas has directly filed statement of claim under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter called the Act) for his reinstatement with full wages and continuity of service.

2. The brief facts relevant for deciding this claim petition is that the claimant/workman was appointed as Gardner(Mali) on 1.8.2009 after being selected on interview by respondent No. 1 on regular post and his appointment was under the direction of respondent No. 2. Respondent No. 2 has complete administrative control and superintendence over the respondent no.1 in terms of directions framing of policies and sanction wages of workers at the site of respondent No.1. The job of the workman at Adi Badri Yamunanagar consisted of all gardening work i.e. plantation, grass related work. The workman's job was of regular sanctioned post and thus the workman had entered in muster roll maintained by respondent no.1. The workman had worked as Gardner for 3 years 09 months approximately regularly without break till 01.05.2013 when respondent no.1 asked him not to come to workplace without serving any notice or giving salary in lieu of notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947. It is further alleged that workman had worked continuously for more than 240 days without any break right from 1.5.2012 to 1.5.2013 and thus, he has completed more than 240 days before his alleged termination in utter violation of Section 25-F of the Industrial Disputes Act, 1947. Not only junior person to the workman was retained in service but many fresh persons were employed after his illegal termination on 1.5.2013. It is therefore, prayed that the respondent/management be directed to reinstate the workman with full back wages and continuity of services in the interest of justice.

3. Respondent/management filed its written statement, alleging therein that the workman was never selected by any interview and no such appointment letter was issued to him. The workman was engaged on need basis as casual worker and upon the availability of funds and the work may continue for a long time even then the said post cannot be claimed as a regular post as the workman was employed only on need basis. The respondent-organization maintenance work of different heritage sites is performed for which the fixed period of continuity cannot be determined. The removal of temporary arrangements cannot be termed as retrenchment. It is denied that there was no fixed pay to be given to daily wagers. The workman was not engaged as regular in service and was not drawing any fix pay as mentioned but on the contrary the workman was engaged as a daily wager and that too for an agriculture work which does not come under the purview of the Industrial Disputes Act and the provision of 240 days is not applicable in the case of workman. It is denied that the workman was

engaged a daily wager and hence, regular appointment cannot be claimed as a matter of right. The workman was engaged too for horticulture(agriculture) work which does not come under the definition of 'Industry' under the Industrial Disputes Act, 1947. In view of the above, it is respectfully prayed that the claim petition filed by the workman may kindly be dismissed in view of the facts and circumstances explained above.

4. In order to prove the facts alleged in the claim petition, workman has examined himself and proved his affidavit as Ex.A1 as part of his statement. This witness has stated in his cross-examination that he was appointed on 1.8.2009 without any interview or appointment letter. According to this witness, he was paid Rs.2,000/- per month. This witness has denied the suggestion that he was engaged on need basis and was paid for the days he worked. As per this witness, neither any termination letter was issued to him nor any compensation is paid to him at the time of termination.

5. Management has submitted affidavit of Naresh Chand, Deputy Superintending Horticulturist in the office of Archaeological Survey of India, but he did not turn up for cross-examination as such, affidavit submitted by the management witness Naresh Chand, Deputy Superintending Horticulurist is legally irrelevant and not admissible in evidence.

6. Heard the learned counsel of the workmen Sh. Shekhar Thakur in the absence management as well as their counsel and perused the written argument filed by the workmen as well as written argument filed by the management and perused the record and file carefully.

7. Before averting to the critical analysis of the facts as well as evidence on record, it is relevant to mention those facts which are either admitted or proved between the parties. The engagement of workman as Gardener(Mali) as on daily wager, payment of workman as per DC rate, alleged date of termination by the respondent-management without any notice or compensation in lieu of notice or admitted facts. Thus, the relationship of workman and management as employee and employer is proved beyond reasonable doubt. It is also pertinent to mention that there is no record that management has violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act, 1947 by retrenching the workman while retaining juniors or subsequent appointment is made by the management as is alleged by the workman in his claim petition as well as affidavit. In fact, nothing is submitted in the form of oral and documentary evidence to prove that he was disengaged in spite of the fact that there were juniors to him or some other persons have been engaged in his place after his alleged termination.

8. The main contention raised by the learned counsel of the management relates to the facts that claimant Alyas is neither workman nor respondent/management is an "industry" as such, there exists no industrial dispute. So question of compliance of Industrial Disputes Act does not arise at all.

9. The first question which arises for consideration is whether claimant/workman is not a workman by virtue of the daily wager engaged on need basis as per argument of management. Even if he was appointed on job basis for a particular time or subject to regular appointment to the Post of Gardner (Mali). To my mind, the claimant is a workman within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532***, wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :—

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

10. Learned counsel of the management in written argument has placed reliance in the case of **Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266**, in order to prove that respondent does not fall within the definition of "Industry". Contrary to this, learned counsel of the workmen contended that that this argument raised by the management-counsel in written argument has no force in the light of the Judgment of Hon'ble Apex Court in the case of **Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36)(supra)** itself. The reference may be made to the judgment of **Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266**, which dealt at length with the ambit and scope of expression "industry" as defined in Section 2(J) of the Act and held as under "-

> ***"(a) Where a complex of activities some of which qualify for exemption, others not involves employees on the total undertaking some of whom are not "workman" as in the University of Delhi case (supra) or some departments are not productive of goods and services, if isolated, even then the***

predominant nature of the services and integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test. The whole undertaking will be "industry" although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions strictly understood (alone) qualify for exemption not the welfare activities or economic adventures undertaken by Government or Statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within section 2(j).

(d) Constitutional and competently enacted legislative provisions way well remove from the scope of the Act categories which otherwise may be covered thereby.

(e) We overrule Safdarjung (supra), Solicitors' case (supra), Gymkhana (supra), Delhi University (supra), Dhanrajgiri Hospital (supra) and other ruling whose ratio runs counter to the principles enunciated above and Hospital Mazdoor Sabha (supra) is hereby rehabilitated."

Seven Judges Bench of the Hon'ble Supreme Court in the case of Bangalore Water Supply(supra) has laid down triple test for determining whether a particular establishment is industry or not. The triple test is where (a) systematic activity (b) organised by cooperation between employer and employee(the direct and substantial element is commercial (c) for the production or distribution of goods and services to calculated to satisfy human wants and wishes prima facie is an "Industry" in that enterprise.

11. Coming into the case in hand, it is undisputed that the work of the claimant/workman was of Gardner and the basic objective of horticulture branch is to maintain and develop the garden in and around of National Protective Monuments. The Tribunal can take cognizance of the fact that all the object of the preservation of ancient monuments, temples etc. with the cooperation of workman and management is by selling tickets for visitors and object of preservation of ancient monuments is the sole object of the respondent-management. Thus, on the basis of the the work assigned to the workmen and their attendance rules and regulations governing the services of the workmen, relations of employer and employee, sale of tickets for visitors and object of preservation of ancient monuments, temples etc. with the cooperation of workmen and management is well established by the evidence produced by either parties. Hence, this Tribunal of the considered opinion that Archaeological Survey of India is a "Industry" as defined in Section 2(J) of the Industrial Disputes Act, 1947. The reference may also be made to the judgment of the Hon'ble Apex Court in **Bharat Sanchar Nigam Ltd. Vs. Maan Singh, 2012(1), SCT page 641**.

12. The question which remains for consideration is whether retrenchment/termination of the workman done by the management without complying the provisions of Section 25 of the Industrial Disputes Act, 1947. Having gone through the facts and pleadings of both the parties as well as well as oral evidence, there is no doubt that workman rendered his services with the management from the date of his engagement till the date of alleged termination. The written statement submitted by the learned counsel of management denotes that he was engaged on need basis as casual worker upon the availability of funds which may continue for a long time. As per written argument, the said post cannot be claimed as regular post as the workman was employed only on need basis hence, the continuity of work for so called longer duration does not entitled to the claimanta/workman for regular post. Therefore, the removal of temporary arrangements cannot be termed as retrenchment. The written arguments submitted by the learned counsel of the management reveals that this defence is taken as workman is claiming his regularization in the respondent-management which is against the issue referred in the reference itself. So far as the reliance placed by the learned counsel of the management in the case of **Secretary State of Karnataka Vs. Uma Devi & Ors. Appeal (Civil) No.3595-3612 of 1999, decided on 10.04.2006**, in respect of regularization is concerned, it has no relevance because neither reference is made for regularization of the workmen nor workmen are claiming their regularization as such, discussion and finding with respect to the regularization in the light of the **Secretary State of Karnataka Vs. Uma Devi & Ors.(supra)**, is beyond consideration and argument of learned counsel of management in written argument is misconceived.

13. It is pertinent to mention that there is no dispute about the preposition of law that onus to prove that claimant/workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that period to show that he has worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of **Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47**. Learned counsel of the workman while placing reliance in the case of **Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari, AIR 2005 SC 2799**, argued that in spite of the order of this Tribunal, management has not submitted the attendance register as well

as muster roll of December 2012 to 01.05.2013 but the muster roll and attendance register submitted by the management is a proof that workman was rendering his services from the year 2009 to May 2013 regularly. As per the argument of the learned counsel of the workman, management has not submitted the documents pertaining to December 2012 to May 2013 so that calculation of 240 days cannot be proved but burden lies on respondent-management to deny the facts that workman has not rendered his 240 days service in preceding year before the date of termination. Learned counsel argued that in the case of **Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari(supra)**. Hon'ble Supreme Court has held on the basis of only three vouchers submitted by the workman to the employee of the bank-management and rendering of 240 days service because bank has neither rebutted the evidence nor produced any piece of evidence against the vouchers. Hon'ble Supreme Court in this case observed that mere denial in the written statement of the claim of the workman is not sufficient evidence. It is pertinent to note observation of the Hon'ble Supreme Court which runs as follows:—

> ***"While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman. The degree of such proof so required, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the bank, that he did work as a driver of the car belonging to the bank during the relevant period which come to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the bank. As against this, as found by the fora below, no evidence whatsoever has been adduced by the bank to rebut even this piece of evidence produced by the workman. It remained contented by filing a written statement wherein it denied the claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the Executive concerned and not that of the bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signatures were taken in the Register maintained by the bank. In this factual background, the question of workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the bank.***
>
> .....
>
> ***For the reasons stated above, we are of the considered opinion that the respondent-workman in this case has established his claim as held by the tribunal and we find no reason whatsoever to interfere with the impugned order."***

In this context, the facts alleged in the written statement of the management are relevant because no where it is denied that workman has not rendered 240 days of service preceding the date of alleged termination on 1.5.2013. This is a specific case of the workman that his service was terminated from 1.5.2013 but this fact is not specifically denied by the respondent-management in its written statement. It is a settled position of law that if there is no specific averment in the statement of defence with respect to the facts alleged in claim petition then as per the settled law, what is not specifically denied is deemed to be admitted. When a fact asserted is not specifically denied, no amount of evidence required to prove the facts which are not in issue. The reference may be made to the judgment of Hon'ble Punjab & Haryana High Court in the case of **M/s Caparo Maruti Ltd. Vs. Presiding Officer, Industrial Tribunal and another, LPA No.793 of 2016(O&M), Civil Writ Petition No.59 of 2014, decided on 30.09.2019**. Similarly, there is no evidence at all that claimant/workman was working for any specific work and for specified period. It also reveals from record that workman was appointed by oral order and he was told by the respondent/management not to come for duty. Thus, it cannot be treated as an appointment for fixed term. Similarly, respondents/managements have also not produced any order regarding any appointment of the workman for any specific working and for specified period. In the circumstances stated above and the evidence on record, it is presumed that workman has rendered his services preceding from the date of his termination till 01.05.2013 i.e. more than 240 days as required for the applicability of Section 25-F of the Industrial Disputes Act, 1947.

14. The question which remains for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. It is admitted fact that neither notice was served upon the workman by the management nor retrenchment compensation was given to the workman. It is also admitted fact that there was no complaint regarding the service and conduct of the workman. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement with continuity of service. It is proven on record that workman was continuously in the employment of the management from his engagement till 1.5.2013 on regular basis. There is no show cause notice or memo issued to the workman by the management. Moreover, the job of the workman was of perennial and regular nature. Though, the workman has not pleaded anything about his post employment after retrenchment but he has alleged in his affidavit that he is unemployed from the date of his termination. The management has not pleaded

and adduced any evidence to show that the workman was gainfully employed. Thus, nothing is brought on record by the management that workman was employed somewhere after his termination.

15. Learned counsel of the workman contended that in the given scenario, facts and evidences on record, it is crystal clear that respondent/management has retrenched the workman with highhandedness without giving notice or retrenchment compensation as such, he is entitled for reinstatement with continuity of service and entire back wages because he was forced to leave the job without any fault. Contrary to this, learned counsel of the management contended that nothing has been stated in the claim petition as well as affidavit filed by the workman with respect to his alleged post termination with respect to employment. Learned counsel of the management contended that workman was earning as usual by virtue of daily wager after termination as such, he is not entitled for any back wages. Learned counsel has placed reliance in the case of **"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324 and M/s Caparo Maruti Ltd. Vs. P.O. Industrial Tribunal and another, LPA No.793/2016(O&M) in Civil Writ Petition No.59/2014, dated 30.09.2019**.

16. The Hon'ble Supreme Court in the case of **Deepali Gundu Surwase(supra)** has held as under:-

"The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages the adjudicating authority or Court may to take into consideration the nature of job and misconduct if any found proved against the employee/workman the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

17. The Hon'ble Punjab & Haryana High Court while referring different judgments of Hon'ble Supreme Court including **Deepali Gundu Surwase(supra), and Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 as well as in the case of Tapash Kumar Paul Vs. BSNL,(2014) 15 SCC 313, Surender Kumar Verma Vs. Central Government Industrial Tribunal-cum-Labour Court,(1980) 4 SCC 443**, has observed that there cannot be a straight jacket formula for awarding relief of back wages along with all the relevant benefits. More or less, it can be address to the discussion of the Tribunal with full back wages could be the normal rule and the party objecting to it must establish. The circumstances insisting the departure at this stage, the Tribunal while exercises its consideration keeping in view of the relevant circumstances but the discretion must be exercises judiciously must be cogent and convincing and must be appear on the face on record. When it is within the discussion of the authority that something has to be done according to the rules, reasons and justice is not according to law and not he humour it is not arbitrary, vague but legal and regular.

18. So far as the facts and evidence of the case is concerned, nothing has been stated in the claim petition with respect to the post employment after alleged termination/ retrenchment period by the workman. Thus, the facts in the claim petition lacks the basic requirement for providing back wages. No doubt, this Tribunal has got power to mould a relief or cover it. The incidental relief for the consequences rendered by illegal retrenchment of the workman. The affidavit submitted by the workman certainly reveals that he has not got any employment anywhere and is completely unemployed. The management counsel has not cross-examined the workman-witness namely PShaheed Ahmad at the time of cross-examination. Even suggestion is not made from workman on this respect at the time of cross-examination. Thus, the facts alleged in affidavit of the workman in this respect remains unrebutted. Nothing is answered by the management with respect to the post retiral employment of the workman. In these circumstances, this Tribunal is of the considered opinion that workman is not entitled for entire back wages instead 50% back wages along with reinstatement with continuity of service. Management is directed to reinstate the workman within three months from the date of the notification of the award.

19. Let copy of this award be sent to the Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 15 जून, 2021

का.आ. 381.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अध्यक्ष/निदेशक,पौधों के आनुवंशिक संसाधन के राष्ट्रीय ब्यूरो,भारतीय कृषि अनुसंधान परिषद, पूसा कैंप, नई दिल्ली; प्रबंधक, पौधों के आनुवंशिक संसाधन के राष्ट्रीय ब्यूरो, क्षेत्रीय स्टेशन, अकोला, (महाराष्ट्र) के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती शोभा कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या CGIT/NGP/48/2014/15) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है।

[सं. एल- 42012/131/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th June, 2021

S.O. 381.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/NGP/48/2014/15) of the Central Government Industrial Tribunal-cum-Labour Court Nagpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman/Director, National Bureau of Plants Genetic Resources, Indian Council of Agriculture Research, Pusa Camp, New Delhi, and The Manager, National Bureau of Plants Genetic Resources, Regional Station, Akola (Maharashtra); and Smt. Shobha, Worker.

[No. L-42012/131/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No.CGIT/NGP/48/2014/15 **Date: 12.02.2021**

Party No.1: **(a)** **The Chairman/Director,**
National Bureau of Plants Genetic Resources,
Indian Council of Agriculture Research,
Pusa Camp, New Delhi – 12.

(b) **The Manager,**
National Bureau of Plants Genetic Resources,
Regional Station,
AKOLA (MS) – 444104.

V/s.

Party No.2: **Smt. Shobha W/o Manikrao Dhore & 18 Others,**
R/o Mothi Umari, Nehru Nagar,
AKOLA (MS) – 444104.

AWARD
(Dated:-12.02.2021)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of National Bureau of Plants Genetic Resources and their workman, Smt. Shobha W/o Manikrao Dhore & 18 Others for adjudication, as per letter **No. L-42012/131/2014 IR (DU), Dated:- 11/11/2014** with the following schedule:-

"Whether the action of the management of National Bureau of Plants Genetic Resources, New Delhi/Akola in denying the claim of applicants for regularization of services Smt. Shobha W/O Manikrao Dhore & 18 Others and to grant them all consequential benefits including paid weekly off since 2005 till today are just fair & legal? If not, to what relief the said workmen are entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Smt. Shobha W/o Manikrao Dhore & 18 Others, ("the workman" in short) filed the statement of claim and the management of National Bureau of Plants Genetic Resources, ("Party no.1" in short) filed the written statement.

3. Petitioners/Workmen file statement of claim on behalf of Smt. Shobha W/o Manikrao Dhore & 18 Others, by asserting that all workmen were appointed by the officer In-charge after interview process conducted by non-applicant; verifying their employment cards, as casual laborers of daily wages, at rate of minimum wages fixed by government. And also asserted that "since last more than 29 years they are still working as casual workers" And also asserted that other similar reference receive this Court from the ministry for regularization of the workers carry reference no. 196/2000 and this tribunal decide this matter on 16.12.2002, which was challenge before Hon'ble High Court by way or writ petition no. 3538 of 2003 which came to be decided on 1.10.2013 wherein order of CGIT as regards regularization of services of workmen has been set aside being in violation of section 10(4) of the Act, 1947 though illegal termination has been confirmed.

4. According to petitioner of party No. 2 "asserted that since year 1984-85 to 15.01.2000 till illegal termination of applicants i.e. for period of more than 15 years all workmen worked continuously for more than 240 days each year as casual laborers for 8 hours per day. Even after their termination was held illegal and they were taken back in service, after re-joining work they have been again performing same work and have been working for more than 240 days each year for 8 hours per day". "Also asserted that they were/are doing work of agricultural for entire year----------doing work of agricultural operation and also looking after cattle".

5. They also asserted that "all the workers are also entitled to paid weekly off since 2005 as the non-applicant has not paid weekly off since 2005 till date". And also asserted that all the worker are also entitled to provident fund, and also asserted that thus all the workmen are entitled to regularization of their services under ICAR and also prayed that to settled the industrial dispute amicably and direct the non-applicants (Party No. 1) to regularize services of all workmen.

6. (Party No. 1) filed reply by taking preliminary objection that Hon'ble High Court in writ petition no.3583/2003. The said award has been set aside by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur, by Judgment dated 1.10.2013. So this reference is not mentionable because "Moreover they are not entitled to continue as a labour due to over age. The applicants are not entitled for any minimum wages and continue in work as they are not legally entitled as they are age barred and most of them are above 65 years old". They also denied that "they/workers had work continuously for more than 240 days each year for eight hours per day till termination of in -------- is false". It is also denied that petitioner/party no. 2, work continue in service by the interim order of the Hon'ble High Court.

7. According to the management (Party No. 1), "the policy relating to engagement regularization of casual workers was reviewed in the light of Supreme Court Judgment dated 17th January 1986 in the case of Surinder Singh and others –vs- Union of India reported in 1986 – LLN-522. And also asserted that "in terms of Clause 4 (i) of the 1993 Scheme, Temporary status would be conferred on casual laborers who are in employment on the date of issue of the said O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days and further in terms of clause 4 (iv)-such casual laborers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for group 'D' posts. Temporary status would only entitle them to benefits stated in clause 5 of the scheme. They also relied this judgment of Full Bench of Supreme Court in the case of Secretary, State of Karnataka Umadevi-reported in (2006) 4 Supreme Court cases at Page 1.

8. According to management (Party No.1), "no right can be founded on an employment on daily wages claim that, such employee should be treated on par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle would be evoked for claiming wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or contractual basis, to claim that they have a right to be absorbed in service as regular employees".

In this way (Party No.1) prayed that the reference filed by the applicant is rejected with exemplary cost.

9. Petitioners Party No.2 filed rejoinder asserting same fact as in statement of claim. They also asserted that, "The Hon'ble High Court clearly shows that the Honorable High Court set aside the order as regard the regularization only because the specific reference was not made by the Central Government to the Industrial Court and the then counsel failed to incorporate the said aspect of regularization in the earlier reference" and also asserted that "---------- Thus, as a result of the fresh conciliation proceeding initiated in year 2013 the fresh reference has been made by the Central Government to this honorable tribunal specifically for regularization therefore the preliminary objection raised by the management is not sustainable".

10. In their rejoinder (Party No. 2), also asserted that **Umadevi** case is concerned as it is referred every now and then without looking into the facts of the present case it is submitted that even after that there has been a judgment of Supreme Court in state of **UP electricity Board versus Puran Chandra Pandey** in which Supreme Court held that **Umadevi** case should not be applied to each and every case mere technically but each case should be decided on its own Merit and Facts. They also asserted that "a seven-judge Bench decision of this Court in Maneka Gandhi vs. Union of India & Anr. AIR 1978 SC. 597 has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated". They asserted that the present case needs to be decided on merit.

11. **Point of determination:-**

(i) Petitioners/Workmen entitled regularization.

(ii) Whether petitioner entitled any relief.

(iii) Whether this reference is not maintainable.

Reasons for decision

12. On Behalf of workmen it was argued that work perform by the petitioner is of regular nature and full time nature i.e. work is available with the petitioner for hole year and petitioner have been working for more than 29 Years so they pray that all the workmen are entitled to regularization of their services under ICAR. On the pentrary management argued that "no right can be founded on an employment on daily wages claim that, such employee should be treated on par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle would be evoked for claiming wages for equal work", and also argued that "the reference filed by the applicant is liable to be rejected" now, I want to see evidence part.

13. On behalf of workmen Vilas S/o Vasantrao Damodhar, (W.W.1) was examining in support of their statement claim. But in his cross-examination he admitted that "Applicants have not given any authority or power of attorney to depose on behalf of them before the Tribunal. I have not filed any documents related to their service and their age. Award dated 16.12.2002 passed in Reference No. CGIT/NGP/196/2000 was challenged in writ petition no. 3538/2003. The said award has been set aside by the Hon'ble High Court on 01.10.2013".

14. He also admitted that "I have not filed any document on record to show that, I have been working as a casual labour since 1984-85. Gokaranabai, kamlabai janjal, kamlabai Olambe and Rampal Gujar are above 60 years of age. The management has not assured us to make permanent. Shri S.D. Sapkal is a labour contractor and he is giving the salary. As there is no relationship of employer and employee with the management, therefore there is no occasion for regularization of the service. ---------- It is true to say that, as I have been deployed by the contractor, therefore, I am not entitled for weekly off and provident fund". He also asserted that (Para No. 23), "I have not filed any document on record of my working.

15. On behalf of management they examining Shri. Dinesh Chand (MW-1), and Dr. Nilamani Dikshit (MW-2) in support of their defence I want of mention some facts which come their cross-examination. Firstly I deal Shri. Dinesh Chand (MW-1) in para no. 11 & 12 of the court statement he asserted some facts "15 laborers were engaged on 08.12.2004 and 4 labourers were engaged on 14.04.2005. It is not true to say that, work done by the contract labourers is available for all time and of same nature. ---------- The witness volunteers that, I joined this post as a OIC on 30.06.2018. There is no contract labour contract from June, 2018 to till date. ---------- It is true to say that, agriculture work is available in our plant through out the year. The witness volunteers that, some time it is not available".

16. Dr. Nilamani Dikshit (MW-2), also admitted and asserted some facts in para no. 13 & 14 of their cross-examination "I have produced the labour contractor license of Shri Sapkal ---------- The services of applicants are taken through labour contractor. ---------- Attendance register are maintain by contractor and not by my office. ---------- They are working with the contractor for more than 10 years". On the contrary workmen w.w.1 vilas vasantrao Damodhar also admitted in para no. 22 of their court statement in following ways. --------"Shri S.D. Sapkal is a labour contractor and he is giving the salary. As there is no relationship of employer and employee with the management, therefore there is no occasion for regularization of the service".

On the perusal of the above evidence it appears that present workmen are a contract labour. Their service record is maintained by the contractor not by the management. It also appears that management evidence (party no.1) evidence more reliable than petitioner evidence.

17. Hon'ble High Court of judicature at Bombay Nagpur bench at Nagpur in writ petition no. 3583/2003. Judgment dated 01.10.2013 mention C.G.I.T. order in following terms in para No. 11, "The action of the management ---------- Shobha M. Dhore and 18 others w.e.f. 15.01.2000 is not legal and proper. ---------- The management is also directed to maintain proper record of the attendance of these workmen and the copy of the record of attendance should also be provided to the workmen. ---------- The management should also take step to absorb these 19 workmen as regular employees and regularize the services so they may get the benefit of continuity in service and other benefits arising out of it".

Hon'ble High Court past an order in such a way in (para no 14) "The impugned judgment and order dated 16.12.2002 passed by CGIT-cum-Labour Court as regards regularization of service of workmen, is set aside being in violation of Section 10 (4) of the Industrial. --------- the employer is at liberty to make such arrangement about regularization, if so advised, and the workmen are also at liberty to take such steps for regularization of their services as are available in law".

18. Hon'ble High Court of judicature at Bombay Nagpur bench at Nagpur in writ petition no. 3583/2003. Judgment dated 01.10.2013 mention on bases of Supreme Court in Physical Research laboratory V.K.G. Sharma reported in 1997 IILLJ 625 SC. Observe that

(i) "The research is not conducted for the benefit of anyone else and the object of research is to obtain knowledge only for the benefit of Department of Space. In these peculiar facts, the Court held that Physical Research Laboratory was not an industry".

(ii) "The research carried on by the respondents is for the benefit of agriculturists and not for the purpose of only non-material gain of knowledge".

(iii) "Duryodhan Hiraman Ingole & ors. vs. Indian Council Agriculture Research & anr. 2009 (4) Bom. C.R. 107. I hold that the finding recorded by the CGIT-cum-labour-Court holding it to be an Industry is legal, correct and proper".

19. Now I want to see the case law to which for both sides advocates mention in these laws in their pleading:-

(i) Secretary, Stare of Karnataka and others V/s Umadevi and 3 Others reported in (2006) 4 Supreme Court cases at page 1, held that "No right can be founded on an employment on daily wages claim that, such employee should be treated on par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle would be evoked for claiming wages for equal work".

(ii) Appeal (civil) 3765 of 2001, Petitioner: U.P. State Electricity Board V/s Respondent: Pooran Chandra Pandey & Others, ate of Judgment on 09/10/2007. ---------- Precedent should be followed only so far as it marks the path of justice, but uou must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it. ---------- In Case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devi's case (supra) inapplicable to the facts of that case. ---------- We have to read Uma Devi's case (supra) in conformity with Article 14 of the Constitution, and we cannot read it in a manner which will make it in conflict with Article 14. The constitution is the supreme law of the land, and any judgment, not even of the Supreme Court, can violate the Constitution. ---------- We may further point out that a seven-Judge Bench decision of this Court in Maneka Gandhi vs. Union of India & Anr. AIR 1978 SC 597 has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. ---------- Maneka Gandhi case (supra) is a decision of a seven-Judge Bench, whereas Uma Devi case (supra) is a decision of a five-Judge Bench of this Court. It is well settled that a smaller bench decision cannot override a larger bench decision of the Court. No doubt, Maneka Gandhi case (supra) does not specifically deal with the question of regularization of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application. ---------- Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and

unreasonableness if employees who have put in such a long service are denied the benefit of regularization and are made to face the same selection which fresh recruits have to face".

19. On perusal the record it appears that reference no. 196/2000, is related to 18th Workers in which termination order dated 15-01-2020 is challenged. My predecessor observed that termination order 15.01.2020 is not legal and proper and unjustified. But this order is challenge before Hon'ble High Court but High Court set aside only regularisation order so in my humble opinion this order stand today. Present reference relating to regulation of above workers in which Hon'ble High Court observed that para no. 13 "At the same time, since the workmen are in employment for over 30 years, It is for the employer to decide the issue of regularization for which purpose, this Court is not in a position to issue directions or order nor the CGIT-cum labour court had any such authority. However, it is for the workmen as well to avail of such a remedy for the part as is available in law.

20. On going our discussion with touch stone of above case law I come to conclusion that petitioners/workmen fails to proof that they come some preview of central or state circular/standing order which regard to their regularization of services. They also fails to proof that their job his permanent nature and their work available for whole year. On going the evidence of both parties, It appears that they are contract labour. Legal position is that this Tribunal has no jurisdiction to interfere in the matter of regularization of the worker i.e. Nothing it so that management party no. 1 breach any circular or standing order regarding regularization. It is also observe that my predecessor decided that in C.G.I.T. case no. 196/2000 National Bureau of Plant Genetic Resources Vs. Smt. Shobha Dhore & others observe that the termination order of the workmen w.e.f 15/01/2000 is not legal and proper and unjustified. It also appears that the management action is proper and justified regarding regularization of the worker. So in my humble opinion Workmen/Party No.2 is not entitled to any relief.

ORDER

"The action of the management of National Bureau of Plants Genetic Resources, New Delhi/Akola in denying the claim of applicants for regularization of services Smt. Shobha W/O Manikrao Dhore & 18 Others and to grant them all consequential benefits including paid weekly off since 2005 till today are just fair & legal. Workmen/Party No. 2 is not entitled to any relief".

S. S. GARG, Presiding Officer

नई दिल्ली, 15 जून, 2021

का.आ. 382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मंडल अभियंता दूरसंचार, डीईटी, ओएफसी, सीटीओ कंपाउंड, माल रोड़ कानपुर (उ. प्र.); निदेशक, बीएसएनएल, सर्वोदय नगर, कानपुर (उ. प्र.); अध्यक्ष और प्रबंध निदेशक, बीएसएनएल, संचार भवन नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और श्री वीरेश कुमार पाण्डेय, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 100/2004) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है।

[सं. एल-40012/43/2004-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th June, 2021

S.O. 382.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 100/2004) of the Central Government Industrial Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the Industrial dispute between the employers in relation to The Divisional Engineer Telecom, DET, OFC, CTO Compound, Mall Road, Kanpur (U.P); The Director, BSNL, Sarvodaya Nagar, Kanpur (U.P); The Chairman and Managing Director, BSNL, Sanchar Bhawan New Delhi and Shri Viresh Kumar Pandey, Worker.

[No. L-40012/43/2004-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT: P. K. SRIVASTAVA HJS (Retd.)

I.D. No. 100/2004
Ref. No. L-40012/43/2004-IR(DU) dated: 26.10.2004

BETWEEN :

Sh. Viresh Kumar Pandey
S/o Sh. Jaga Narayan Pandey
Mansukh Khera, Gangaghat
Unnao (UP)

VS.

1. The Divisional Engineer Telecom
   DET, OFC, CTO Compound, Mall Road
   Kanpur (U.P.)

2. The Director
   BSNL
   Sarvodaya Nagar
   Kanpur (U.P.)

3. The Chairman and Managing Director
   BSNL
   Sanchar Bhawan
   New Delhi – 110001

AWARD

1. By order No. L-40012/43/2004-IR(DU) dated: 26.10.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Viresh Kumar Pandey, S/o Sh. Jaga Narayan Pandey, Mansukh Khera, Gangaghat, Unnao (UP) and the Divisional Engineer Telecom, DET, OFC, CTO Compound, Mall Road, Kanpur (U.P.) & the Director, BSNL, Sarvodaya Nagar, Kanpur (U.P.) & the Chairman and Managing Director, BSNL, Sanchar Bhawan, New Delhi for adjudication to this CGIT-cum-Labour Court, Lucknow. This Tribunal vide its award dated 07.05.2015, adjudicated the reference; which was notified by the Appropriate Government vide notification dated 20.05.2015, in pursuance of Section 17 of the Industrial Disputes Act, 1947. The management of the BSNL, preferred a Writ Petition Misc. Single No. 12225 of 2017 B.S.N.L. Thru Chairman & M.D. Sanchar Bhawan, New Delhi & others vs. Viresh Kumar Pandey & others before Hon'ble High Court, Lucknow Bench, Lucknow; wherein the Hon'ble High Court vide its order dated 27.08.2018, pleased to remand back the award dated 07.05.2015, with certain observation, to adjudicate the reference a fresh on the basis of evidence already adduced and pass fresh reasoned and speaking order.

2. The reference under adjudication is:

"WHETHER THE ACTION OF MANAGEMENT OF DIVISIONAL ENGINEER TELECOM, D.E.T. O.F.C. C.T.O. COMPOUND, KANPUR IN TERMINATING THE SERVICES OF THEIR WORKMAN SHRI VIRESH KUMAR PANDEY S/O SHRI JAGAT NARAYAN W.E.F. 5.7.1989 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. The case of the workman, Viresh Kumar Pandey, in brief, is that he was engaged as casual labour w.e.f. 17.02.1982 on being sponsored by the Employment Exchange after interview etc. and worked accordingly upto 03.07.1989. It is submitted by the workman that he was sent to jail in wake of an FIR being lodged on account of death of his wife on 04.07.2989. It is further stated that on grant of bail, the workman approached the management for joining but they declined the same; moreover, he submitted an affidavit dated 27.0.9.1989 as per the demand of the Assistant Engineer. It is submitted by the workman that he raised an industrial dispute before CGIT-cum-Labour Court, Kanpur which was rejected for the want of jurisdiction and later approached the Central Administrative Tribunal, Allahabad Bench, which directed the management to consider the representation of the workman. It is stated that the workman as per directions of the CAT, moved a representation before management of BSNL, which rejected the same vide order dated 27.05.2003. On rejection

of the representation, the workman again raised an industrial dispute before the Assistant Labour Commissioner (Central), which was in turn referred to this Tribunal for adjudication. The workman has submitted that the management in its written statement, in reply to his statement of claim, before CGIT-cum-Labour Court, Kanpur has submitted that "the applicant was not taken on duty as he was arrested by the police on the charge of murder of his wife and reminded in jail for more than 48 hours. The management further submitted that the applicant is not entitled of the any relief till he is acquitted honourably by the Criminal Court". The workman has further submitted that in reply to his rejoinder statement before CGIT-cum-Labour Court, Kanpur, the management has submitted that "He was not taken on duty due to the charge against him for the murder of his wife and subsequent arrest by the police on 14.08.1989. Shri Viresh Kumar has not been removed from employment under any industrial dispute, but he was not taken on duty for the reasons quoted above." The workman has submitted that he has been acquitted of the offence under which he was charged vide judgment and order dated 03.07.1995 passed by the IV Additional Sessions Judge, Unnao. The workman has given details of his working in each year of engagement; and has prayed that he be reinstated with continuity in service and back wages. He has also prayed that he be held entitled for same position and designation as already given to his junior workmen.

4. The management of the BSNL has filed its written statement, denying the claim of the workman; wherein it was submitted that the workman was engaged as casual labourer purely on daily basis and he continued to work up to 3rd July, 1989 and thereafter he did not turn up for duty nor any intimation was given by him to the department explaining his absence from duty. It is submitted by the management that the reason for not turning up on duty on 4th July, 1989 was that the applicant was absconded from police as he was involved in a dowry death case of his wife and was later on arrested by the police. It is specifically pleaded by the management that the contention of the workman that he was restrained from resuming his duties by the Assistant Engineer, is false and baseless; and there was no question of given any assurance to the workman by any of the officers of the department to engage him after his release on bail. The management has submitted that the dispute pertaining to the alleged termination of service of the applicant has already been adjudicated upon by the CGIT-cum-Labour Court, Kanpur vide its award notified on 04.02.1997, therefore, the workman cannot agitate the same issued again before this Tribunal as the same is barred by the principle of resjudicata. It is also contention of the management that the workman had not been absolved from the charges on merits but was given benefit of doubt. It is stated that the workman was not covered by the Casual Labourers Grant of Temporary Status and Regularization Scheme 1989 as the said scheme was introduced on 01.10.1989 and it was precondition that the official should have been in employment on 01.10.1989 and since the workman did not attend his duty after 03.07.1989, therefore, the benefit of temporary status scheme could not have been given to the workman. The management has submitted that the workman himself did not report for duty as he was involved in a criminal case, therefore, after his acquittal in criminal case he could not have been re-engaged in service as there was a complete ban on the engagement of fresh casual laburers and further he could not have been given the benefit of the Grant of Temporary Status and Regularization Scheme 1989 as he was not in the employment on he cut off date i.e. 01.10.1989. Accordingly, the management has submitted that the claim of the workman be rejected being devoid of any merit.

5. The workman has field its rejoinder wherein apart from reiterating the averments already made in the statement of claim he has denied that he was a contract labour and stressed that he was appointed as casual worker by the management.

6. The workman has filed the photocopy of numerous documents in support of his claim; whereas the management has filed none. The workman has examined himself and the management examined Shri Raj Kumar Bhargava, Asstt. Engineer (Retd.) & Shri B.D. Vidhyarthi, JTO in support of their case. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments; and after hearing the parties, the reference was answered vide award 07.5.2015; however on filing of Writ Petition before Hon'ble High Court, Lucknow Bench, Lucknow; Hon'ble High Court, while remanding back the industrial dispute, to this Tribunal, vide order dated 27.08.2018 in Writ Petition Misc. Single No. 12225 of 2017 B.S.N.L. Thru Chairman & M.D. Sanchar Bhawan, New Delhi & others vs. Viresh Kumar Pandey & others, made certain observations, which reads as under:

> ***"Learned counsel for respondent workman has tried to place reliance upon the finding given by the Industrial Tribunal which states as per the stand taken in the written statement the departments' case is that it would have permitted the respondent workman to join only after his acquittal. Such pleadings cannot be made basis for any finding of fact on the issue as to whether actually the respondent workman has ever approached the department. The pleading is only a legal sand of the department. In absence of the specific finding with regard to the fact, as to whether the respondent workman ever approached the petitioner department or not, the Industrial Tribunal was required to give a finding of fact based upon the evidence adduced by the parties. In absence of such a finding the award cannot stand and is set aside.***

Counsel for both the parties agree that the matter may be remanded back to the learned tribunal for its reconsideration.

In view therefore, the matter is remanded back the tribunal. The Industrial Tribunal shall decide the matter again on the basis of evidence already adduced and pas fresh reasoned and speaking order within a period of four months from the date a certified copy of this order is placed before it."

7. Heard learned authorized representatives of the parties at length and perused entire evidence on record in light thereto.

8. The workman has come up with a case that he was engaged as casual labour by the opposite party after calling the names from the Employment Exchange. The authorized representative of the workman has contended that the workman was falsely implicated in a criminal case on death of his wife on 04.07.1989 and he was sent to jail. When the workman was released on Bail he approached the management, which did not allow him to join the duties. It is also contended by the workman that the management regularized other junior casual labourers sparing him. He has relied upon:

(i) *2014 (15) SCC 313 Tapas Kumar Paul vs Bharat Sanchar Nigam Limited & another.*

(ii) *Hon'ble Supreme Court in Civil Appeal No. 6767 of 2013 decided on 12.08.2013 in Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & others.*

(iii) *Hon'ble Supreme Court in Civil Appeal No. 346 of 2015 decided on 13.01.2015 in Jasmer Singh vs. State of Haryana & another.*

(iv) *Hon'ble Supreme Court in Civil Appeal Nos. 2417-2418/2014 decided on 17.02.2014 Hari Nandan Prasad & another vs. Employer I/R to Management of FCI & another.*

(v) *Hon'ble Supreme Court in Civil Appeal No. 10957/2013 decided on 11.12.2013 B.S.N. vs Bhurumal.*

(vi) *Hon'ble Allahabad High Court in Writ – C No. 6108 of 2004 decided on 01.09.2015 in State of U.P. Thru. Executive Engineer & another vs Raj Karan & another.*

9. The authorized representative of the management has submitted that the workman had never been terminated by the management rather he abandoned the services by himself due to criminal case instituted against him. The management has also contended that the present industrial dispute is barred by the principle of resjudicata and accordingly, the present reference is bad in the eye of law. He has also submitted that the workman is not entitled for benefits of regularization scheme.

10. I have given my thoughtful consideration to the rival contentions of the parties and scanned the documentary and oral evidence adduced by the parties, in light of the order dated 27.08.2018 of the Hon'ble High Court in Writ Petition Misc. Single No. 12225 of 2017 B.S.N.L. Thru Chairman & M.D. Sanchar Bhawan, New Delhi & others vs. Viresh Kumar Pandey & others.

11. The management has taken preliminary objection that the present industrial dispute is barred by the principal of resjudicata as the same has already been decided by the CGIT-cum-Labour Court, Kanpur. The workman has denied the same with contention that the CGIT-cum-Labour Court, Kanpur rejected the claim for the want of jurisdiction.

Having gone through the documentary evidence relied upon by the workman, it is evident that the Central Government referred the industrial dispute regarding termination of the services of workman, Viresh Kumar to CGIT-cum-Labour Court, Kanpur, which vide their award dated 20.01.1997 returned the above reference unanswered with following observation without going into the merits of the case:

"3. It is unnecessary to given the detail of the case as the Hon'ble Supreme Court in case of Sub. Divisl. Inspector Versus Vaikem V.T. Joseph Lab I.C. 1996 (105) (SC) has held that Telecom Department is not an Industry. Hence this Tribunal has no jurisdiction to determine the dispute. Accordingly, the reference is returned unanswered."

Thereafter, the workman approached the CAT, Allahabad for redressal of grievances, which too instead of passing any order on merit, directed the respondent/management to consider the representation of the workman; and on rejection of the representation of the workman by the management of BSNL, the workman approached the conciliation officer of the appropriate government since by the time the Telecom Department has been nominated as BSNL and declared an Industry. Thus, the issue/dispute that existed between the workman and the management of BSNL had never been decided on merit; and accordingly, the present industrial dispute is not barred by the principal of resjudicata as contended by the opposite party.

12. Admittedly, the workman, Viresh Kumar had been engaged as a casual labour after observing due formalities available under Rules by the management of BSNL on 17.02.82 and worked as such continuously till

03.07.89. On 04.07.89 the wife of workman, Viresh Kumar died due to burn injuries and he was taken into police custody on institution of criminal case against him on alleged charges of dowry death of his wife. The workman was sent to jail and later on was released on bail. The workman has come up with a case that on his release on bail he approached the department but he was denied joining due to his involvement in criminal case. Per contra, the management of the BSNL has taken a very clear cut stand that it the workman abandoned the services w.e.f. 04.07.89 and never informed the department about his absence whatsoever. It is also the case of the management that the management never terminated his services at any point of time; rather the workman himself did not turn up to join the duties. The management witnesses during their evidence before this Tribunal have stated that the workman did not turn up before the management to give his joining and also that he never informed the management of his absence. In rebuttal, the workman has stated that after releasing from bail, he approached the BSNL for joining but he was not allowed. However, he submitted an affidavit dated 27.09.1989 as per demand of the Assistant Engineer.

In rebuttal, the management of the BSNL, before this Tribunal has taken a specific stand that it was the workman who abandoned the services and did not turn up to join the services. The workman has pleaded that on release from jail, on bail, he approached the management for joining and submitted an affidavit dated 27.09.89 as per directions of Assistant Engineer; but even then, he was not allowed to join.

13. Hon'ble High Court, in its order dated 27.08.2018, has endorsed submissions of the counsel of the petitioner/BSNL that there is no specific finding of this Tribunal, as to whether the respondent workman ever approached the petitioner department or not. In this regard the workman has pleaded that on grant of bail, the workman met the Assistant Engineer, Coaxial Maintenance, CTO, Compound, Kanpur and stated the fact relating to his false implication in a Criminal Case, consequent to accidental death of his wife. The workman has also pleaded that he submitted an affidavit dated 27.09.1989 before the authorities; but he was not allowed to resume duties. This pleading has been rebutted by the management; however, the workman has also pointed out towards pleadings/stand taken by the management before CGIT-cum-Labour Court, Kanpur.

It is noteworthy to mention here that the Central Government referred the industrial dispute regarding termination of the services of workman, Viresh Kumar to CGIT-cum-Labour Court, Kanpur, which vide their award dated 20.01.1997 in I.D. No. 80 of 1991 returned the above reference unanswered for the want of jurisdiction. Thereafter, the workman approached the CAT, Allahabad for redressal of grievances, directed the respondent/management to consider the representation of the workman; and on rejection of the representation of the workman by the management of BSNL, the workman again approached the conciliation officer of the appropriate government and since by the time the Telecom Department has been nominated as BSNL and declared an Industry. Thus, the issue/dispute that existed between the workman and the management of BSNL had been referred to this Tribunal, which is under adjudication in the present industrial dispute; and from perusal of the reply/written statement, filed by the management, to the statement of claim, it comes out that the workman on release on bail, presented himself before BSNL authorities; but he was not allowed to resume duties. The relevant para 02 of the reply, filed before CGIT-cum-Labour Court, Kanpur in ID. No. 80 of 1991, page No. 4/25, reads as under:

> ***3. Applicant was not taken on duty as he was arrested by the police on the charge of murder of his wife and remained in Jail for more than 48 hrs. The case was registered by the police under section 498/304B of IPC."***

Thus, from perusal of the above quoted para, it could be well inferred that the workman who was arrested by the police for alleged involvement of a Criminal Case, when released on bail approached the employer authorities; but the authorities did not take him on duty as he was arrested by the police and he remained in Jail for more than 48 hrs. This goes to corroborate the pleadings of workman that he approached the management of the BSNL for resumption of his duties; but it was the management which did not allow him to join the duties due to institution of a Criminal Case against the workman. Though, before this Tribunal the BSNL has taken a different stand; but the stand taken by the BSNL before CGIT-cum-Labour Court, Kanpur in ID. No. 80 of 1991 amounts to estoppel; and the management is estopped to deviate from its pleadings.

There is no iota of evidence from the management as to what steps had been taken by the management, on acquittal of the workman, particularly when the management took a stand before CGIT-cum-Labour Court, Kanpur vide para 6 of the reply, paper No. 4/25, that any relief regarding joining can only be provided to the workman if he is acquitted in the criminal case instituted against him. Hence, when the workman was acquitted vide judgment and order dated 03.07.95 then it was incumbent upon the management to call the workman to join his duties.

Hon'ble Bombay High Court in *Bhadrawati Shikshan Sanstha and another vs. Hashib Pasha & others 2015 (144) FLR 1059* has observed that "termination for unauthorized absence for long period, without notice to report on duty, is legal." Therefore, the action of the management not calling he workman to join the duties on his acquittal amounts to termination of his services without notice."

14. Thus, in view of the facts and circumstance of the case, and law cited hereinabove, there is ample evidence to record this finding that the workman who had been arrested in wake of a Criminal Case, on release on bail, approached the management for resumption of his duties; but he was not allowed to resume his duties due to pending Criminal Case against him and for want of acquittal from competent court of law, therefore, I am of considered opinion that the workman who had been arrested for alleged involvement in wake of Criminal Case, on release on bail, approached the authorities to resume his duties but the authorities did not permit him due to pendency of the Criminal Case, amounts to retrenchment of the workman without any notice or notice pay in lieu thereof.

15. The authorized representative of the workman has submitted that the workman was entitled for reinstatement and regularization under Casual Labourers Grant of Temporary Status and Regularization Scheme 1989 as the cut of date of the scheme was 01.10.1989. It is the case of the workman that he remained in jail from 14.08.89 to 14.09.89 and on release, on bail, he approached the BSNL on 15.09.89 he was not allowed to join the duties. The workman was subsequently acquitted of the criminal charges, thus, had he been allowed joining on 15.09.89 he have been in service on the cutoff date i.e. 01.10.1989 and might have been regularized like other juniors to the workman, therefore, he must be allowed full back wages.

16. Hon'ble Supreme Court in *Jagbir Singh v. Haryana State Agriculture Mktg. Board (2009) 15 SCC 327: (2010) 1 SCC (L&S) 545: Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and others (2010) 2 SSC (L&S) 309* has observed as under:

> ***"However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.***
>
> ***The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded."***

17. In the light of principle laid down in aforementioned case laws, it would not be just and proper to direct that the workman be reinstated in service. The ends of justice would meet by paying compensation to the workman instead in place of relief of reinstatement in service. Therefore, having regard to these facts that the workman has worked with the opposite parties for more than 07 years i.e. from 17.02.1982 to 03.07.1989, the interest of justice would be subserved, if, management is directed to pay lump sum amount of compensation only. Accordingly, the management is directed to pay a sum of Rs. 1,00,000/- (Rupees One Lakh only) to the workman as compensation for termination of his services in violation of section 25 F of the I.D. Act. The said amount shall be paid to the workman within 08 weeks of publication of the award, failing which; the same shall carry simple interest @ 6% per annum.

18. The reference under adjudication is answered accordingly.

Let two copies of this award be sent to the Ministry for publication

P. K. SRIVSTAVA, Presiding Officer

नई दिल्ली, 16 जून, 2021

का.आ. 383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, ओलंपस पर्सनल एलाइड सर्विस प्रा. लिमिटेड, चंडीगढ़ के प्रबंधतंत्र के संबद्ध नियोजकों और श्री संदीप कुमार, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 166/2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.05.2021 को प्राप्त हुआ था।

[सं. एल- 42025/07/2021-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 16th June, 2021

S.O. 383.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 166/2019) of the Central Government Industrial Tribunal -cum-Labour Court, -2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Olympus Personal Allied Service Pvt. Ltd., Chandigarh and Shri Sandeep Kumar, Worker which was received along with soft copy office award by the Central Government on 17.05.2021.

[No. L-42025/07/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 166/2019
Registered on:-22.11.2019

Sandeep Kumar, S/o Raj Kumar, R/o Village Sagga,
Tehsil Nilokheri, Distt. Karnal. ...Workman

Versus

Director, Olympus Personal Allied Service Pvt. Ltd.,
SCO 85, Level 2, Sector 38-C, Chandigarh. ...Management

AWARD
Passed on:-01.04.2021

1. The workman Sandeep Kumar has directly filed this claim petition under Section 2-A of the Industrial Dispute Act 1947 with prayer that defendant/management be directed to reinstate him in service and pay previous salary amounting Rs.4,24,500/- along with 24% interest.

2. Claimant Sandeep Kumar has stated in his claim petition that he was appointed by respondent-company as Technician in his company (emp. Code. 240240) and he worked with the respondent as per the guidance of officials of respondent very honestly till 19.8.2015. It is further alleged that one of official of respondent-company Inderjit lodged a false case against him FIR No.722 dated 19.08.2015 under Section 380, 454 IPC with Police Station City Karnal and claimant faced a trial in the said case before the Court of Ms. Shikha Chief Judicial Magistrate, Karnal and later on claimant exonerate from the said case vide judgment dated 18.07.2016. Moreover, it is significant to mention that respondent had terminated the service of the claimant and withheld salary of Rs.4,24,500/- to claimant. Claimant requested the respondent to release his balance salary amounting Rs.4,24,500/- which is due against respondent however, the respondent is postponing the matter one excuse or other. Claimant also requested the respondent to join the job. However, the officials of respondent did not allow him to join the service and started harassing the workman. It is further stated that he (claimant) appealed the respondents to pay aforementioned amount to him again and again and further allow to join the service without asking him to file any affidavit/undertaking, but the respondent till now did not pay any heed on the request and keep on postponing the matter on one pretext or the other. Claimant served a legal notice to the respondents on 23.1.2018 and a copy of which has been sent to the Labour Authority but the respondent did not pay the aforementioned amount to him till today and no adequate reply has been given to him. Moreover, claimant also filed a petition against the respondents before the Central Labour Commissioner, Karnal but the same was returned by the learned Court vide order dated 29.10.2018 with the finding to file petition before this Hon'ble Tribunal.

3. The management has alleged in its written statement that claim statement needs to be rejected, solely for the reason that, the same is not maintainable being barred by limitations having been raised well after expiry of three years, after the date from which non-employment has been alleged. It is alleged that the effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-Section (1) of Section 2(A) of the Act may make an application directly to the Labour Court or Tribunal for settlement of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making sub application to Labour Court or Tribunal. It is submitted that such

application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in Sub-Section (1).

4. I have heard the learned AR for the workman and representative of the management and perused the file carefully.

5. Learned AR of the workman contended that claim petition is maintainable because learned Tribunal has to keep in view all the relevant factors including the mode and manner of appointment, nature of appointment, length of service, the grounds of which the termination has been done and the reason for delayed raising the industrial dispute. As per learned AR of the workman, the delay occurred due to the criminal prosecution and assurance given by the management to workman for reinstatement after the acquittal in the criminal case. Learned AR of the workman placing reliance in the case of ***Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar, Civil Apeal No.8434 of 2014,*** argued that there is no such compulsion that it must be raised before the Court within 3 years from the date of alleged termination of the services of the workman, provided there existed any industrial dispute between the workman and the employer.

6. Representative of the management argued that the present statement of claim is not maintainable because the claimant does not fall under the definition of workman as per Industrial Disputes Act, 1947. Learned AR of the management further argued that claim petition is time barred in view of the provision laid down in Section 2-A of the Industrial Disputes Act, 1947 which is mandatory and this Court has no jurisdiction to entertain the claim petition if it is filed beyond three years from the alleged date of discharge, dismissal retrenchment etc. As per AR of the Management this claim petition is preferred by the workman after lapse of three years as such barred by limitation and therefore not maintainable and liable to be dismissed. Learned representative of management has placed reliance in the case of ***SMT. RUKMINIBAI AND OTHERS VS. THE DIVISIONAL CONTROLLER, NEKRTC, BIDAR DIVISION, BY ITS CHIEF LAW OFFICER,*** decided by the Hon'ble Karnataka High Court as well as in the case of ***M/s ITC Infotech India Ltd., Bngalore Vs. Mr. Venkataramana Uppada, ILR 2016 KAR 3041.***

7. The provision incorporated under Section 2-A of the Industrial dispute Act, 1947 runs as follows:—

(I) "Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of worker is a party to the dispute.

(II) Nothwithstanding anything contained in Section 10, any such workman as is specified in Sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(III) The application referred to in Sub-Section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in Sub-Section(1)."

8. It is pertinent to mention that by Act 24 of 2010, Section 2-A was renumbered as Sub-Section (1) and by same Act i.e., Act 24 of 2010 Sub-Section (2) and (3) came to be inserted after Section 2(A) of the I.D. Act. The said amendment Act came into effect on and from 15th September, 2010. Thus the effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-Section (1) of Section 2A may make up application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub-Section (1).

9. Thus, question which would arise for consideration in the instant case is whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition or in other

words, if an application for condonation of delay under Section 5 of the Limitation Act is filed, would it be maintainable and such delay can be condoned?

10. Hon'ble Division Bench of Karnataka High Court in case of ***SMT. RUKMINIBAI AND OTHERS VS. THE DIVISIONAL CONTROLLER, NEKRTC, BIDAR DIVISION, BY ITS CHIEF LAW OFFICER*** has held that Section 3 of the Limitation Act, 1963, is peremptory in nature. It imposes a duty on the Court to dismiss the application, which is barred by limitation even if the plea of limitation is not raised. If the claim petition is barred by time, the Court or an adjudicating authority has no power or authority to entertain such an application an decide it on merits. As stated, even in the absence of such a plea by the respondent or opponent, the Court or the authority must dismiss such an application if it is satisfied that the same is barred by limitation.

11. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily **"before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)."** Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

12. So far as the case law relied by the learned AR of the workman is concerned, the ratio laid down in the case of ***Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar(supra),*** is not applicable to the facts of this case because in Raghubir Singh case, there was a reference by the State Government for adjudication before the Tribunal. The Hon'ble Supreme Court while dealing with the provision incorporated under Section 10 of the Industrial Disputes Act, 1947 has held that appropriate government in exercise of its statutory power under Section 10-C of the Act can refer the industrial dispute between the parties at any time to either jurisdictional Labour Court/Industrial Tribunal. Thus, the Law laid down in ***Raghubir Singh Vs. General Manager, Haryana Roadways, Hissa (supra) case,*** is not applicable to the present case because this claim petition has been preferred by the workman under Section 2-A of the Industrial Disputes Act, 1947 directly and limitation prescribed therein of three years from the date of termination/retrenchment so, I am of the opinion that case Law relied by the learned AR of the workman is not applicable with respect to claim petition under Section 2-A of the Industrial Disputes Act, 1947.

13. Undoubtedly, it is a admitted fact that workman is alleged to be terminated from service on 19.08.2015 just after lodging FIR against the workman while this petition has been preferred on 22.11.2019 under Section 2-A of the Industrial Disputes Act, 1947 beyond three years from the date of alleged termination on 19.08.2015.

14. So far as the condonation of delay is concerned, the provisions incorporated in Section 2-A sub-clause-3 mandates that application to the Labour Court or Tribunal shall be made before the expiry of three years from the date of dispatch/dismissal/retrenchment or otherwise, as is specified in Sub-Section 2-A of the Industrial Disputes Act, 1947. Thus, this Section is coached that mandatory terms and this Tribunal has got no power to condone the delay at any cost. The Hon'ble Supreme Court while dealing with the statutory provision of EPF & MP Act, 1952 with respect to the condonation of delay as held in the case of ***Oil and Natural Gas Corporation Ltd. Vs. Gujarat Energy Transmission Corporation Ltd. & Others, reported in (2017) 5 SSC 42 as follow:—***

> ***"The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statue commands that this Court may condone the further delay not beyond 60 days. It would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution".***

15. Having gone through the above facts and legal proposition, this Tribunal is of the considered opinion that the claim petition is barred by limitation as such, this Court has got no power to entertain the claim petition and liable to be dismissed. Hence, claim petition is dismissed.

16. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 17 जून, 2021

का.आ. 384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वरिष्ठ डाक अधीक्षक, विभाग डाक विभाग, संगरूर, जिला- संगरूर (पंजाब) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री हरदीप सिंह , कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- II, चंडीगढ़ के पंचाट (संदर्भ संख्या 8/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.06.2021 को प्राप्त हुआ था।

[सं. एल-40012/02/2016-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th June, 2021

S.O. 384.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2016) of the Central Government Industrial Tribunal cum Labour Court-ll, Chandigarh, as shown in the Annexure, in the Industrial dispute between the employer in relation to The Senior Superintendent of Posts, Deptt. of Posts, Sangrur, Distt- Sangrur (Pb.) and Shri Hardeep Singh, Worker which was received along with soft copy office award by the Central Government on 01.06.2021.

[No. L-40012/02/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. SINGH, Presiding Officer

ID No. 8/2016
Registered on:-5.4.2016

Hardeep Singh S/o Hakam Singh, Vill. Natto, PO Kila Hakima,
Via Ladda, Distt. Sangrur. ...Workman

Versus

Senior Superintendent of Posts, Deptt. of Posts,
Sangrur, Distt. Sangrur (Pb.). ...Respondent/Management

AWARD
Passed on:-04.05.2021

Central Government vide Notification No. L-40012/02/2016-IR(DU) Dated 07.03.2016, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether action of the Supdt. of Post Offices, Sangrur in termination the services of Shri Hardeep Singh S/o Shri Hakam Singh w.e.f. 14.06.2013 without following the principals of natural justice is just, fair and legal? If not, to what relief the concerned workman Shri Hardeep Singh entitled?"**

1. Both the parties were put to notice and claimant/workman Hardeep Singh filed statement of claim, with the averment, that he was engaged as GDS(Mail Carrier) by the Deptt. of Posts, Sangrur at village Jhall w.e.f. 19.10.2009 and drawing a salary of Rs.5,000/- per month and continuously working till 14.06.2013. His name in the seniority list exists at Serial No.389 and he was also allowed annual increment after expiry of every year. There is no enquiry or any other charge against him during his service period. Juniors to the workman were retained in service which is violation of Section 25-F(a), 25-F(b) and 25-G of the ID Act, 1947 and they are all continuing in service till date. His termination is against the provisions of natural justice as no charge-sheet, enquiry and show cause notice were served upon him before terminating his services. It is therefore,

prayed that his termination is illegal, unjust, unfair and against the laws of the land and therefore entitled to be reinstated in service with full back wages and other attendant benefits.

2. Respondent/management has filed its written statement, alleging therein that the workman was put to work as GDSMD/MC Jhall Branch Office w.e.f. 20.10.2009 on temporary basis by Sh. Sudhir Kumar the then IP(west) Sub-Division, Sangrur. The workman was allowed only one increment in November, 2012 where in his TRCA was fixed as Rs.2715/- from Rs.2665/- erroneously as he was not entitled for any increase in TRCA by way of increment as he was not regularly appointed GDS. The GDS mentioned at Sr. No.390 to 442 were recruited and approved by adopting proper procedure. The post of GDSMD/MC Jhall has been filled by the way of redeployment and the surplus GDS has been engaged on this post. The workman submitted an application dated 21.05.2013 addressed to Inspector Posts West Sub-Division Sangrur in which he admitted to have come to know that he was put to work on temporary basis. He was served upon a show cause notice vide SDI(P) West Sangrur memo No.A/Substitutes dated 17.05.2013 providing sufficient opportunity to represent his case in order to provide natural justice. As the GDS are governed under the GDS(Conduct & Engagement) Rules 2011, they do not belong to the category of workman attracting the provisions of the Industrial Disputes Act, 1947. It is therefore, prayed that the workman is not entitled for any kind of relief as action of the management in terminating his services is just and fair in the eyes of the law.

3. In order to prove his case, workman Hardeep Singh has submitted his affidavit as Ex.WW1/A and cross-examined by the learned counsel of the management Sh. V.K. Arya. He has stated that neither any appointment letter was issued by the Postal Department nor any interview was conducted at the time of his appointment. As per this witness, a notice was issued by the Postal Department for retrenchment/termination and he presented himself before Prithvi Singh who is Sub-Divisional Inspector who informed that his services were no more required and it come to an end. He was earning Rs.5,000/- at the time of his retrenchment/termination. Thus, according to this witness, he was simply appointed without any advertisement, examination or interview whatsoever and his services were terminated by issuing a notice.

4. Management has submitted affidavit of witness Narinder Singh, Superintendent, Post Office, Sangrur who has tender his affidavit in support of the facts alleged in the written statement as Ex.MW1/A along with 4 documents Ex.MW1/1 to Ex.MW1/4. He has been cross-examined by the learned AR of workman Sh. R.K. Parmar. This witness has stated in his cross-examination that workman was engaged for job as he was fit to render his services. As per this witness, the work and conduct of the workman was good and there was no complaint at all. Witness Narinder Singh has further admitted that name of workman was mentioned in the seniority list maintained by the department due to mistake. According to this witness, workman was dis-engaged due to the non-work in the postal-department without any charge-sheet, enquiry etc. This witness has further stated that notice is sent to the workman as per legal provision without any compensation. This witness has been cross-examined by the Tribunal itself wherein he was admitted that workman rendered his services regularly from his engagement till his disengagement. Thus, there is no dispute that workman rendered his services uninterrupted from 19.10.2009 to 14.06.2013 as is alleged by the workman in his claim petition.

5. I have heard Sh. R.K. Parmar AR of workman and Sh. V.K. Arya, Ld. Counsel for the management and perused the file, evidence and documents submitted by both the parties.

6. Learned AR of the workman contended that though workman was engaged as GDS(Mail Carrier) he is terminated by respondent without following the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947. No compliance has been done for the retrenchment vide Section 25-N of the Industrial Disputes Act, where three month notice in writing is required, indicating the reasons for retrenchment. Furthermore, prior permission from the appropriate-government for such as the case may be prescribed by the Government has been made on its behalf. Learned AR further argued that even in case of compliance of Section 25-F(C) has not been made, which is mandatory in nature as such, the alleged retrenchment/termination is illegal and workman is entitled for re-instatement in service with all back wages and other attendant benefits. Learned counsel has placed reliance of the cases of ***Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat(Haryana), Civil Appeal o.3478 of 2010, decided on April 9, 2010, Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014, Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016, Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000 decided by the Hon'ble Supreme Court*** and judgment of Hon'ble Punjab & Haryana High Court in ***State of Haryana Vs. Sultan Singh & Others, CPW No.2370/2013, decided on 17.11.2014.***

7. Contrary to this, management counsel argued that workman was engaged as GDSMD/MC governed under GDS(Conduct & Engagement) Rules, 2011, in the department and his services were governed accordingly. The Industrial Disputes Act, 1947 is not applicable with respect to workman. Learned counsel further argued that claimant Hardeep Singh is not a workman as defined under Section 2-S of the ID Act therefore, he does not belong to the category of workman. Learned counsel further contended that issue relates with the service matter as such, this Tribunal has got no power to adjudicate the matter and if jurisdiction lies, it

is with the Central Administrative Tribunal because of the Postal Department is a Central Government-establishment. Learned counsel further contended that because of the regular recruitment, the workman was retrenched from service after giving one month notice as required under Section 25-F of the Industrial Disputes Act, 1947 after giving due opportunity of hearing. Thus, it could not be argued that provision of Industrial Disputes Act, 1947 is not complied by the respondent-management. Learned counsel further argued that there is no legal proposition for engagement of such GDS on permanent basis that too without any advertisement, examination or interview. Hence, it cannot be said that services of the workman is terminated without following the principal of natural justice as well as the provisions incorporated under the Industrial Disputes Act, 1947.

8. The first contention raised by the learned counsel of the management is that the claimant does not come within the purview of "workman" as defined under Section 2(S) of the Industrial Disputes Act, 1947 because he was employed on temporary basis as GDS. In this connection, reference can be made to the decision of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:—

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

9. Second contention of the learned counsel of the management relates with the jurisdiction of the Tribunal. According to the learned counsel of the management, this Tribunal has got no jurisdiction to decide the reference because management is Central Government undertaking under the Government of India. According to the learned counsel, the jurisdiction lies with the Central Administrative Tribunal at Chandigarh. I find no force in the light of the judgment of the Hon'ble Supreme Court in the case of **Telecom District Manager & others. Vs. Keshab Deb.(Civil Appeal No.3324 of 2008 arising out of SLP (Civil) No.9494 of 2004-decided on 6/5/2008** where a driver/casual labour on daily wage basis, serving in the Directorate of Telecommunicaitons at Dimapur, had filed an application before the Central Administrative Tribunal, Gauhati by the workman, challenging the order of his termination by his employer and the Gauhati Bench of CAT had passed an order, holding the termination order to be illegal. Before the Apex Court, the department/employer had raised the contention as regards jurisdiction of the CAT. The Hon'ble Supreme Court while holding that an employee who claims himself to be a workman, will have a right of election in the matter of choice of forum either before Industrial Tribunal or before Central Administrative Tribunal, observed in para 14 as under:—

> ***"In a case of the present nature where inter alia a employee maintains a writ petition not only on the ground of violation of equality clause enshrines under Article 14 of the Constitution of India but also on the ground of violation of provisions of the Industrial Disputes Act, 1947, he has an option to choose his own forum. Section 28 of the Administrative Tribunal Act, 1985 does not bar the jurisdiction of the Central Administrative Tribunal. It saves the jurisdiction of the Industrial Tribunal. An employee who claims himself to be a workman, therefore, will have a right of election in the matter of choice of forum....."***

10. Thus, it is relevant to see whether action of respondent/management is in compliance of Section 25-F, 25-G or 25-N of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:-

> ***"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—***
>
> ***(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;***

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"

Section 25-G of the Industrial Disputes Act, 1947 read as follows:-

"25G. Procedure for retrenchment-Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

Section 25-N of the Industrial Disputes Act, 1947 read as follow:-

[25N. Conditions precedent to retrenchment of workmen-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

11. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. Perusal of the file and documents filed by the respective parties, it is clear that notice is issued by the Sub-Divisional Inspector, Postal Department and after giving opportunity of hearing, his services were terminated on 14.06.2013 copy of the termination letter is attached as Ex.MW1/4. Perusal of termination letter denotes that it is mere formality on behalf of the department and services of the workman Hardeep Singh was terminated by observing that he was appointed as substitute and there is nothing in his representation as such, his services is hereby terminated with immediate effect. Termination letter Ex.MW1/4 does not reveal the reason for termination. The facts alleged in the representation by the workman are not discussed and reasons find no place for not accepting the facts alleged in the representation. Thus, issuance of alleged notice appears to be an eye wash as such, it may be observed that the services of the workman was terminated without appreciating the facts and the provisions incorporated under the ID Act.

12. So far as non-compliance of Section 25-F(c) and 25-N of the ID Act is concerned. It is pertinent to mention that Hon'ble Supreme Court in the case of ***M/s Empire Industries Ltd. Vs. State of Maharashtra & Ors., Civil Appeal No.3003 of 2005,*** has specifically held that section 25-N is a complete scheme for retrenchment of the workman where a number of workers are in excess of 100 workmen. In present case, as alleged, there are more than 471 workmen which has not been controverted by the management. In such circumstances, non-compliance of the provision of Section 25-N is damaging to the stand taken by the management regarding the issuance of notice to the workman. Furthermore, before issuing a notice to the workman under Section 25-N prior permission of the concerned-authority or government has to be taken before issuing notice to workman. As per the Hon'ble Supreme Court, any retrenchment of the workman can only be done under the provisions laid down under the Act and Rules. So far as sending notice to the competent-authority or the government under Section 25-N is concerned. It has not been duly complied as per the evidence on record. Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014*** and in the case of ***Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016,*** has held that Industrial Disputes Act, 1947 is a beneficial legislation and its object is for settlement of the Industrial Disputes. It provides unfair labour practice on the part of the employer in case of engaging employees/temporary employees for a long period without giving the status of permanent employees. As per the Hon'ble Supreme Court the condition mentioned in Section 25-N of the Industrial Disputes Act is mandatory and it mandates the employer to serve a notice in the proper manner for the appropriate government or such authority as is specified by the appropriate government by notification in the official gazette. Same view is reiterated by the Hon'ble Supreme Court in the case of ***Raj Kumar(supra).*** As per the Hon'ble Court, since mandatory condition for retrenchment were not complied with retrenchment is liable to be set aside. In nutshell, it can be observed in the light of the judgment of the Hon'ble Apex Court that the nature of notice envisaged under Section 25-F and 25-N of the Industrial Disputes Act, 1947 is not derogatory but mandatory and employer/respondents-managements were duty bound

to comply the procedure laid down in Section 25-F and 25-N in letters and spirit before terminating/retrenchment of the services of the workmen.

13. Learned AR of the workman has further contended that there is gross violation of the provisions incorporated under Section 25-G of the ID Act, 1947. In this connection, learned AR has drawn my attention towards the evidence submitted by the workman received under the RTI Act. The copy of gradation list Ex.MW1/2 reveals that this list contains 471 posts and 442 persons mentioned by their names while at serial no.443 to 447 is mentioned as vacant posts. It is pertinent to mention that the name of the workman has find place on serial no.389 while at serial no.390 onwards relates to those persons who were subsequently engaged by the Postal Department. Learned counsel of the respondent-management could not explain as to why the particular workman Hardeep Singh was selected for retrenchment while there many persons were rendering their services engaged by the Postal Department after the appointment of the workman. Hence, it is not sufficient to say that the name of the workman is mentioned in the gradation list by mistake. In reply to the facts alleged in Para 3 of the petition about the gradation list, nothing is stated by the respondent-management except saying that it is a matter of record. In fact, there is no pleading at all with respect to mentioning the name of the workman in gradation list in Para 3 of written statement as such, this Tribunal is of the considered opinion that Postal Department has adopted the policy of hire and fire denouncing the policy of "last come fist go" and the services of the workman is terminated with some ulterior motive while there were more than 50 person engaged after the workman Hardeep Singh as per gradation list.

14. Learned counsel of the management contended that the services of the workman is terminated because regular recruitment has to be conducted by the department but nothing is stated with respect to the number of date of advertisement, vacancy, and examination(if any) is conducted after the termination/retrenchment of the workman. Thus, mere averting in written statement about the recruitment of new incumbent is any eyewash regarding the termination of the workman that too in spite of efficient and good services of the workman throughout his tenure as GDS in the respondent-management.

15. Learned counsel of the workman contended that in the given scenario, facts and evidences on record, it is crystal clear that respondent/management has retrenched the workman with highhandedness without giving notice or retrenchment compensation as such, he is entitled for reinstatement with full back wages because he was forced to leave the job without any fault. Contrary to this, learned counsel of the management contended that nothing has been stated in the claim petition as well as affidavit filed by the workman with respect to his alleged post termination with respect to employment. Learned counsel of the management contended that workman was earning as usual by virtue of daily wager after termination as such, he is not entitled for any back wages. Learned counsel has placed reliance in the case of **"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya"** ***reported as (2013) 10 SCC 324*** and ***M/s Caparo Maruti Ltd. Vs. P.O. Industrial Tribunal and another, LPA No.793/2016(O&M) in Civil Writ Petition No.59/2014, dated 30.09.2019.***

16. The Hon'ble Supreme Court in the case of **Deepali Gundu Surwase(supra)** has held as under:-

"The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages the adjudicating authority or Court may to take into consideration the nature of job and misconduct if any found proved against the employee/workman the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

17. The Hon'ble Punjab & Haryana High Court while ***Deepali Gundu Surwase(supra),*** and ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** as well as in the case of ***Tapash Kumar Paul Vs. BSNL,(2014) 15 SCC 313, Surender Kumar Verma Vs. Central***

Government Industrial Tribunal-cum-Labour Court,(1980) 4 SCC 443, has observed that there cannot be a straight jacket formula for awarding relief of back wages along with all the relevant benefits. More or less, it can be address to the discussion of the Tribunal with full back wages could be the normal rule and he party objecting to it must establish. The circumstances insisting the departure at this stage, the Tribunal while exercises its consideration keeping in view of the relevant circumstances but the discussion must be exercises judicious must be cogent and convincing and must be appear on the face on record. When it is within the discussion of the authority that something has to be done according to the rules, reasons and justice is not according to law and not he humour it is not arbitrary, vague but legal and regular.

18. It is pertinent to mention that the length of service of the workman is stated to be from 19.10.2009 to 14.06.2013 till the alleged termination. He has been terminated without any cogent evidence in utter violation of principle of natural justice violating the proposition of Law incorporated under Section (G) of the Industrial Disputes Act, 1947. Hence, in the light of the above facts and legal preposition, this Tribunal is of the considered opinion that workman is entitled for reinstatement in service along with 50% back wages and the management is directed to reinstate the workman within three months from the date of the notification of the award.

19. Let copy of this award be sent to the Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 17 जून, 2021

का.आ. 385.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राष्ट्रीय थर्मल पावर कॉर्पोरेशन लिमिटेड (एनटीपीसी लिमिटेड), कायमकुलम, अलाप्पुझा, (कोचीन), अजमल हुसैन सुरक्षा एजेंसी, एर्नाकुलम, (कोचीन) ,के प्रबंधतंत्र के संबद्ध नियोजकों और श्री हरिदासन के., कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 27/2021) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है।

[सं. एल-42025/07/2021-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th June, 2021

S.O. 385.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2021) of the Central Government Industrial-Tribunal-cum Labour Court Ernakulam, as shown in the Annexure, in the Industrial dispute between the employers in relation to The National Thermal Power Corporation Ltd (NTPC Ltd.), Kayamkulam, Alappuzha, (Cochin), Ajmal Hussain Security Agency, Ernakulam, (Cochin) and Shri Haridasan K., Worker.

[No. L-42025/07/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL– CUM – LABOUR COURT, ERNAKULAM

Present: Shri. V. VIJAYA KUMAR, B. Sc, LLM, Presiding Officer

(Thursday the 25th day of March 2021, 1942)

ID. No. 27/2021

Workman : Shri.Haridasan K.
Kunnelparambil House
Thamallackal North P.O.
Alappuzha – 690548

By Adv.C. A. Rajeev

Management : 1. The National Thermal Power Corporation Ltd (NTPC Ltd.)
Choolatheruvu P.O.
Kayamkulam
Alappuzha – 690506

2. Ajmal Hussain Security Agency
Room no.60/479 C1
Koithara Complex
Koithara Road, S. Panampilly Nagar
Ernakulam – 682036

This case coming up for hearing on 25.03.2021 and the same day this Tribunal-cum-Labour Court passed the following.

AWARD

1. Present industrial dispute is filed U/s 2A(2) of the Industrial Disputes Act,1947 as the conciliation effort made before the Conciliation Officer failed.

2. The workman was seeking a declaration that the action of the management in terminating the service of the workman w.e.f. 31.05.2020 is illegal and unjust. He also sought a further relief of reinstatement in service of NTPC, Kayamkulam with full back wages, continuity of service and all other attended benefits.

3. Summons was issued to management 1, management 2 and the workman. Management 1 and 2 entered appearance. The learned Counsel for the workman entered appearance and filed a memo from the workman stating that he is not interested to proceed with the above case. He also prayed that he may be permitted to withdraw the industrial dispute.

4. Since the workman is not interested in pursuing this industrial dispute filed U/s 2A(2) of the ID Act, there cannot be any adjudication regarding the claim of the workman. Hence a 'no dispute' award is passed in this industrial dispute.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 25th day of March, 2021.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 17 जून, 2021

का.आ. 386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेजर जनरल इंचार्ज, कर्नल मुख्यालय मध्य कमान, 2 अरल रोड, कैंट, लखनऊ (उ. प्र.) ; कार्मिक प्रशासनिक अधिकारी, मुख्यालय मध्य कमान, लखनऊ के प्रबंधतंत्र के संबद्ध नियोजकों और श्री महेश प्रसाद, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 26/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है ।

[सं. एल-14012/17/2016 -आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th June, 2021

S.O. 386.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2016) of the Central Government Industrial-Tribunal-cum Labour Court Lucknow as shown in the Annexure, in the Industrial dispute between the employers in relation to The Major General Incharge, c/o Colonel , Headquarter Central Command, 2 Aral Road, Cantt, Lucknow (U.P); Personnel Administrative Officer, Headquarter Central Command, Lucknow (U.P); and Shri Mahesh Prasad, Worker.

[No. L-14012/17/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

Present: P. K. SRIVASTAVA, HJS (Retd.)

I.D. No. 26/2016

Ref. No. L-14012/17/2016-IR(DU) dated: 27/28-06-2016

BETWEEN :

Sh. Mahesh Prasad s/o Sh. Shriram
H. No. 313, R/o Vill & PO – Jaurash
The – Haidergarh
Barabanki – 225126.

Vs.

1. Major General Incharge C/o Colonel
Headquarter Central Command
2 Aral Road, Cantt
Lucknow – 226002.

2. Personnel Administrative Officer
Headquarter Central Command
Lucknow – 226002.

AWARD

1. By order No. L-14012/17/2016-IR(DU) dated: 27/28-06-2016, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"KYA PRABNDHAN, MAJOR GENERAL INCHARGE, HEADQUARTER CENTRAL COMMAND, LUCKNOW-2 VA ANYA DWARA SHRI MAHESH PRASAD PUTRA SHRI RAM, CASUAL LABOUR KO MAAH MARCH 2015 KO VETAN BHUGTAAN BINA NAUKARI SE NIKAAL DIYA JANA NYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO VAADI KIS RAAHAT KO PAANE KA HAKDAAR HAI?"

3. The case of the workman, Mahesh Kumar, in brief, is that he was appointed by the opposite party No. 1 on the post of Masalachi (cook) on 16.06.2013 @ Rs. 2500/- per month, which was raised to Rs. 2750/- w.e.f. January, 2014 and Rs. 4000/- per month from October, 2014. The workman has alleged that the opposite party made payment to him upto November, 2014 and thereafter he worked upto March, 2015 but was not paid any salary; rather he was forced to work after March, 2015. The workman has stated that the oral termination of his services are unjustified in the eye of law; and accordingly, has prayed that he be reinstated with consequential benefits.

4. The management of the opposite parties has disputed the claim of the workman through its written statement; wherein it has submitted that the workman's appointment was purely contractual which was valid for a specific period and was subject to renewal of his service at the end of the period of his contract. The management has stated that the services of the workman had been terminated after the period of the contract was over and the identity card submitted by the workman is for limited period, which was *valid* up to

30.04.2015 only. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman filed its rejoinder; wherein apart from reiterating the averments already made in the statement of claim, has submitted that the management has failed to comply with the provisions of Contract Labour (Regulation & Abolition) Act, as it has not entered into any agreement and there is no license as principal employer.

6. The workman field documentary evidence in support of his case vide list W-9; whereas the management filed no piece of paper in support of its pleadings. The workman examined himself and he was cross-examined by the counsel of the management; however, the management did not adduce any oral evidence in support of its pleading in spite of ample opportunity being provided to it, which closure of opportunity to lead evidence vide order dated 05.03.2020. The parties were heard on merits of the case and were afforded opportunity to file their written submissions, which was adequately afforded by the management only.

7. Heard learned counsel of both the parties and perused entire evidence available on record in light of the rival pleading.

8. The authorized representative of the workman has argued that the workman had been appointed by the opposite party No. 1 on the post of Masalachi (cook) on 16.06.2013 and he worked as such upto March, 2015; but his services had been terminated by the management without giving any notice or notice pay in utter violation to the Section 25 F of the Act. He further alleged that the management even did not pay the workman salary for the period December, 2014 to March, 2015; he also contended that the so called contractual engagement of the workman by the management violates to the provisions of Contract Labour (Regulation & Abolition) Act as there is no agreement on record nor any license as principal employer been filed by the management before this Tribunal.

9. In rebuttal, the learned counsel for the management has submitted that the workman had been employed on purely contractual for a specific period, which were terminated as he was found inefficient and unsuitable to perform the required service. The counsel for the management has argued that the identity card issued by the workman is for limited period, which was valid upto 30.04.2015 only and not beyond. The counsel for the management, in his written submission, has relied upon number of case laws in support of his case; but has not mentioned complete details of the citation so that no account of the same could be taken.

10. I have given my thoughtful consideration to the rival submissions of the learned counsel.

11. The workman has come up with a case that he had been appointed by the management of the opposite parties and he worked with them w.e.f. 16.06.2013 to March, 2015 as Masalchi (cook). It is also the case of the workman that his services have been terminated by the management without any notice or notice pay in lieu thereof or any retrenchment compensation, in contravention to the provisions of Section 25 F of the Act.

12. In rebuttal, the management has contended that the workman's employment was contractual in nature, which ceased with the expiry of the term of contract.

13. The workman in order to corroborate his pleadings has submitted photocopy of his 'Temporary Entry Pass', issued on 13.11.2014, valid upto 30.04.2015. The workman in his cross-examination has stated that no written appointment letter was given to him; however, the management has accepted employment/engagement of the workman on contract basis for a fixed span of time, which expired with the end of period of engagement. The management has accepted identity card filed by the workman, paper No. 3/4 which had been issued on 13.11.2014 and had been valid upto 30.04.2015; however as per pleadings of the workman his services had been terminated 'orally' w.e.f. March, 2015. The management has not filed any evidence in support of its claim nor has adduced any oral evidence to corroborate its pleadings.

14. The management has disputed the claim of the workman with pleading that the workman had been employed on contractual basis for a limited period, which expired on expiry of the term of engagement; however, it failed to corroborate its pleadings through cogent evidence i.e. contract agreement its and payment details; nor did it controverted the evidence filed by the workman. On the contrary the workman has proved its pleadings by the way of evidence and he was duly cross-examined by the authorized representative of the management. Hon'ble Apex Court in *State of U.P. vs. Sheo Shanker Lal Srivastava & others (2006) 3 SCC 276 the* statement of the witness, having not been controverted would be deemed to be admitted.

15. Accordingly, from pleadings of the management itself is proved that the workman had been engaged on contractual basis; however, it did not made any specific statement regarding period of engagement of the workman. On the contrary the workman has pleaded and proved that he had been employed w.e.f. 16.06.2013 to March, 2015; and thus, the workman had worked for more than 240 days in preceding twelve months from the date of his alleged termination i.e. March, 2015; and oral termination of his services, without any notice or

notice pay in lieu thereof was in violation of the section 25 F of the I.D. Act, thus, the alleged termination of the services of the workman was neither legal nor justified.

16. Now, it is to be considered as to whether the workman is entitled for reinstatement. From the evidence produced by the workman it is not proved that his appointment was as a regular worker. Admittedly, the services of the workman were terminated orally on March, 2015. In *Haryana Roadways vs. Rudhan Singh (2005) 5 SCC 591; 2005 SCC (L&S) 716* Hon'ble Apex Court while considering the question regarding award of back wages has observed:

> ***"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of section 25 F of the Act, entire back wages should be awarded ..... However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which required to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calander year."***

17. In *2008 (119) FLR 877 Deepak Ganpat Tari vs. N.E. Theater Pvt. Ltd.* Hon'ble Bombay High Court relying on the Hon'ble Apex Court's judgment in *2008 (117) FLR 1086 (SC) A P V K Brahmandandam 2008 (118) FLR 376 (SC) Telephone DM vs. Keshab Deb 2006 (111) FLR 1178 (SC) JDA vs. Ram Sahai*, while awarding compensation of Rs. 1,50,000/- to the concerned workman considering his daily wages as Rs. 45/- in view of the fact that the workman had put in about 3 years of service, has observed as under:

> ***"It is apparent that termination of services of a daily wager does not amount to retrenchment and for violation of section 25 F in such circumstances, the employee cannot be given benefit of reinstatement with continuity and back wages. Hon'ble Apex Court has hold that in such circumstance employee is entitled to benefit of compensation only."***

18. Also, in *Jagbir Singh v. Haryana State Agriculture Mktg. Board (2009) 15 SCC 327: (2010) 1 SCC (L&S) 545: Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and others (2010) 2 SSC (L&S) 309* Hon'ble Apex Court has observed as under:

> ***"However, in recent past, there has been a shift in the legal position and in a along line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.***
>
> ***The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded."***

19. In the light of principle laid down in aforementioned case laws, it would not be just and proper to direct that the workman be reinstated in service. The ends of justice would meet by paying compensation to the workman instead in place of relief of reinstatement in service.

20. Having regards to these facts that the workman has worked as contractual worker for approximately two years i.e. from 16.06.2013 to March, 2015 and he was getting Rs. 4000/- per month at the time of his alleged termination and keeping in view the entire facts of the case and the law, the interest of justice would be subserved, if, management is directed to pay lump sum amount of compensation only.

21. Accordingly, the management is directed to pay a sum of Rs. 1,00,000/- (Rupees One Lakh only) to the workman as compensation for termination of his services in violation of section 25 F of the I.D. Act. The said amount shall be paid to the workman within 08 weeks of publication of the award, failing which; the same shall carry simple interest @ 6% per annum.

22. The reference under adjudication is answered accordingly.

Let two copies of this award be sent to the Ministry for publication.

Lucknow

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 जून, 2021

का.आ. 387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राष्ट्रीय थर्मल पावर कॉर्पोरेशन लिमिटेड (एनटीपीसी लिमिटेड), कायमकुलम, अलाप्पुझा, (कोचीन), अजमल हुसैन सुरक्षा एजेंसी, एर्नाकुलम, (कोचीन), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री एम. सुशीलान, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 23/2021) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है।

[सं. एल-42025/07/2021-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th June, 2021

S.O. 387.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2021) of the Central Government Industrial-Tribunal-cum Labour Court Ernakulam, as shown in the Annexure, in the Industrial dispute between the employers in relation to The National Thermal Power Corporation Ltd. (NTPC Ltd.), Kayamkulam, Alappuzha, (Cochin), Ajmal Hussain Security Agency, Ernakulam, (Cochin) and Shri.M. Suseelan , Worker.

[No. L-42025/07/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM –LABOUR COURT, ERNAKULAM

Present: Shri. V. VIJAYA KUMAR, B. Sc, LLM, Presiding Officer

(Thursday the 25th day of March 2021)

ID. No. 23/2021

Workman : Shri.M. Suseelan
Nadupallil House
Muthukulam North
Choolatheruvu P.O.
Alappuzha – 690506

By Adv. C. A. Rajeev

Management : 1. The National Thermal Power Corporation Ltd (NTPC Ltd)
Choolatheruvu P.O.
Kayamkulam
Alappuzha – 690506

2. Ajmal Hussain Security Agency
Room no.60/479 C1
Koithara Complex
Koithara Road, S. Panampilly Nagar
Ernakulam – 682036

This case coming up for hearing on 25.03.2021 and the same day this Tribunal-cum-Labour Court passed the following.

AWARD

1. Present industrial dispute is filed U/s 2A(2) of the Industrial Disputes Act, 1947 as the conciliation effort made before the Conciliation Officer failed.

2. The workman was seeking a declaration that the action of the management in terminating the service of the workman w.e.f. 31.05.2020 is illegal and unjust. He also sought a further relief of reinstatement in service of NTPC, Kayamkulam with full back wages, continuity of service and all other attended benefits.

3. Summons was issued to management 1, management 2 and the workman. Management 1 and 2 entered appearance. The learned Counsel for the workman entered appearance and filed a memo from the workman stating that he is not interested to proceed with the above case. He also prayed that he may be permitted to withdraw the industrial dispute.

4. Since the workman is not interested in pursuing this industrial dispute filed U/s 2A(2) of the ID Act, there cannot be any adjudication regarding the claim of the workman. Hence a 'no dispute' award is passed in this industrial dispute.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 25th day of March, 2021.

V. VIJAYA KUMAR, Presiding Officer.

नई दिल्ली, 17 जून, 2021

का.आ. 388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राष्ट्रीय थर्मल पावर कॉर्पोरेशन लिमिटेड (एनटीपीसी लिमिटेड), कायमकुलम, अलाप्पुझा, (कोचीन), अजमल हुसैन सुरक्षा एजेंसी, एर्नाकुलम, (कोचीन), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री बीजू पी., कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, एर्नाकुलम पंचाट (संदर्भ संख्या 21/2021) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है ।

[सं. एल-42025/07/2021-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th June, 2021

S.O. 388.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2021) of the Central Government Industrial-Tribunal-cum Labour Court Ernakulam, as shown in the Annexure, in the Industrial dispute between the employers in relation to The National Thermal Power Corporation Ltd. (NTPC Ltd), Kayamkulam, Alappuzha, (Cochin), Ajmal Hussain Security Agency, Ernakulam, (Cochin) and Shri Biju P.,Worker.

[No. L-42025/07/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIALTRIBUNAL–CUM–LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Thursday the 25th day of March 2021)

ID. No. 21/2021

Workman : Shri.Biju P.
Kayamuriyil House
Muthukulam South P.O.
Karthikappally
Alappuzha – 690506

By Adv. C. A. Rajeev

Management : 1. The National Thermal Power
Corporation Ltd. (NTPC Ltd)
Choolatheruvu P.O.
Kayamkulam
Alappuzha – 690506

2. Ajmal Hussain Security Agency
Room No.60/479 C1
Koithara Complex
Koithara Road, S. Panampilly Nagar
Ernakulam – 682036

This case coming up for hearing on 25.03.2021 and the same day this Tribunal-cum-Labour Court passed the following.

AWARD

1. Present industrial dispute is filed U/s 2A(2) of the Industrial Disputes Act,1947 as the conciliation effort made before the Conciliation Officer failed.

2. The workman was seeking a declaration that the action of the management in terminating the service of the workman w.e.f. 31.05.2020 is illegal and unjust. He also sought a further relief of reinstatement in service of NTPC, Kayamkulam with full back wages, continuity of service and all other attended benefits.

3. Summons was issued to management 1, management 2 and the workman. Management 1 and 2 entered appearance. The learned Counsel for the workman entered appearance and filed a memo from the workman stating that he is not interested to proceed with the above case. He also prayed that he may be permitted to withdraw the industrial dispute.

4. Since the workman is not interested in pursuing this industrial dispute filed U/s 2A(2) of the ID Act, there cannot be any adjudication regarding the claim of the workman. Hence a 'no dispute' award is passed in this industrial dispute.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 25th day of March, 2021.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 17 जून, 2021

का.आ. 389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अधीक्षण पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण विभाग, चंडीगढ़ (यूटी), संरक्षण सहायक, भारतीय पुरातत्व सर्वेक्षण, हिसार (हरियाणा) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री जितेंद्र कुमार, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 32/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.06.2021 को प्राप्त हुआ था।

[सं. एल-42025/07/2021-आईआर (डीयू)]
डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th June, 2021

S.O. 389.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2016) of the Central Government Industrial-Tribunal-cum Labour Court –II , Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintending Archaeologist, Department of Archaeological Survey of India, Chandigarh (UT);

The Conservation Assistant, Archaeological Survey of India, Hisar (Haryana) and Shri Jitender Kumar ,Worker which was received along with soft copy office award by the Central Government on 01.06.2021

[No. L-42025/07/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. SINGH, Presiding Officer

ID No. 32/2016

Registered on:-15.12.2016

Sh. Jitender Kumar S/o Sh. Ram Kehar, Resident of House No.264,
Jag Jiwan Nagar, New Rishi Nagar, Ward No.1, Near Vatika,
Hisar, Tehsil & District Hisar, Haryana. ...Workman

Versus

1. The Superintending Archaeologist, Department of Archaeological Survey of India, Chandigarh Circle, Bay No.51-52, Sector 31-A, Chandigarh (UT).

2. The Conservation Assistant, Archaeological Survey of India, Firoz Shah Palace & Tehkhana, Sub-Circle, Hisar, Tehsil & District Hisar, Haryana. ...Respondents/Managements

AWARD

Passed on:-05.05.2021

1. The workman Jitender Kumar has directly filed statement of claim under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called the Act) for his reinstatement with full back wages along with interest and continuity of service.

2. The brief facts relevant for deciding this claim petition is that the claimant/workman was appointed on the post of Mali in the year 2006 on part-time basis by the respondent/management for which applications were invited/demanded in order to fill up the part time vacant posts. The appointment of the workman was made on the basis of terms & conditions of regular services approved by the Central Government. The workman had obtained the experience/training certificate of Mali under the St. Thomas Church Garden Nursery, near Old Court Chowk, Hisar, Haryana from 15.02.2008 to 30.06.2010. The work is still in existence and numbers of similarly situated junior employees are still working with the management so, retaining the juniors by terminating the services of the workman amounts to violative of section 25-G of the Industrial Disputes Act. The workman requested the management for regularization of his services time and again but instead of regularization of the services of the workman all of sudden in the month of June, 2015, the respondent/management illegally terminated the services of the workman by refusing him duty, without assigning any reason & justification, without issuing any charge-sheet, or conducting any domestic enquiry, without issuing any show cause notice and without payment of any compensation to the workman as per Section 25-F and 25-H of the Industrial Disputes Act, 1947. Thus, the termination of the workman by the management by refusing him duty w.e.f. June 2015 is illegal, wrongful, malafide and against the principle of natural justice, unfair labour practice and abuse of the managerial & administrative powers of the management and in utter violation of the law laid down by the High Courts as well as Hon'ble Apex Court vide landmark judgments from time to time. The workman falls under the definition of the workman and management also falls under the definition of "industry" as defined under the Industrial Disputes Act. In view of the submissions made above, it is therefore, prayed that workman is entitled for reinstatement into service with full back wages along with interest and continuity of services with all consequential benefits.

3. Respondents/managements have filed its written statement, alleging therein that the question of inviting application to engage any labour on part time basis as claimed by the workman does not arise as the department engages part time labour against estimated work and as per approval given by the Head Quarter and funds allotted to the department for the work at particular monument/site. The claimant/workman was engaged as a daily wager/casual labour and was paid wages as per rate fixed by DC Hisar and management has not violated Section 25-G of the Industrial Disputes Act, 1947. There was no provision for part time worker in the

approved estimate of 2015-16 in A.R. (Non-Plan) therefore workman was not engaged as part time worker for the year 2015-16. It is incorrect that claimant/workman has been working continuously for the approximately 8 year or he has completed 240 days in a year. The workman was engaged as a casual worker/labour(daily wages) on muster roll basis against estimate of particular work under A.R.(Non-Plan) for the month of June & July 2015 till the said work is completed. The workman was engaged as part time casual worker only for 10 months in 2007 and 11 months in 2008 as per the provision given in the estimate under A.R.(non-plan). In the year 2014 he was engaged as a part time casual worker as per requirement and as per provisions of estimate such as in February 13 days, March 13 days, April 18 days, May 20 days, June 30 days and so on. Even if the claimant/workman had worked continuously on part time basis in the whole year, then he could not attained 240 days in a given year in any way. It is therefore, respectfully prayed that claim petition of the claimant/workman be dismissed with costs in the interest of justice, equity and fair play.

4. In order to prove his case, workman Jitender Kumar has submitted his affidavit and proved it as Ex.WW1 who has been cross-examined by the learned counsel of the management. This witness has stated that he has 5 children aged about 15 years to 5 years who are taking education in government-school. According to the witness, he was appointed by CEO Kaul Sahib without any appointment letter. He has further stated that he rendered his services in the management-office from 8 am to 5 pm not only for 2 hours as alleged by the respondent-management. As per this witness he had worked with the management as part time and payment was made accordingly on the basis of DC rates.

5. Management has submitted affidavit of witness Arvind Sharma, Surveyor Officer of management, who has submitted his affidavit as Ex.MW1/A along with 2 documents(colly) i.e. Ex.MW1/1(Hand Receipts) and Ex.MW1/2(Muster Roll) as documentary evidence in support of the facts alleged in the written statement and cross-examined by the learned counsel of workman. During the course of cross-examination, he has admitted that during the course of engagement, his work and conduct was satisfactory and notice was not served to the workman at the time of his termination because he was a daily wager. This witness has alleged that there were no records pertaining to the year 2007 and 2008 relating to the workman. He has denied the suggestion of the learned counsel of the workman that he was regular employee of the department. He has further admitted that workman rendered his services from 2015 to 2017 on muster roll. Thus, as per the cross-examination of this witness, there is no doubt that claimant/workman has rendered his services as Mali on part-time and was paid as per DC rate fixed year to year.

6. I have heard Sh. Suresh Kumar Kaushik, Ld. Counsel for the workman and Sh. V.K. Arya, Ld. Counsel for the management and perused the file, evidence and documents submitted by both the parties.

7. Before averting to the critical analysis of evidence on record, it is relevant to mention those facts which are admitted between the parties. The engagement of workman as part time Mali, payment of workman as per DC rate, alleged disengagement of workman by the respondent-management without any notice and compensation are admitted facts. Thus, the relationship of workman and management as employee and employer is proved beyond reasonable doubt. It is also pertinent to mention that there is nothing on record to prove that management has violated the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947 as is alleged by the workman in his claim petition as well as affidavit because nothing is submitted in the form of oral or documentary evidence to prove that he was disengaged in spite of the fact that there were juniors to him or some other persons have been engaged in his place after his alleged termination.

8. Having gone through the facts in the pleadings as well as oral evidence led by both the parties, there is no doubt that workman rendered his services with the management at least from the year 2007 to June 2015 i.e. till his alleged dis-engagement/termination. Management has not accepted the version of the claimant/workman with respect of rendering his services from the year 2006 as is alleged in the claim petition. There is nothing on record to prove that workman rendered his services in the year 2006 while initial burden lies with the workman to prove that he was engaged in the year 2006 as part-time Mali. The real controversy lies between the parties with respect to the non-compliance of Section 25-F of the Industrial Disputes Act, 1947 at the time of the alleged termination of the workman by the respondent-management. Learned counsel of the management contended that being a daily wager and working with few hours there were no need to serve a notice to the workman as he had not rendered 240 days of service in preceding year from the date of alleged termination as required under Section 25-F of the Industrial Disputes Act, 1947. Contrary to this, learned counsel of the workman contended that workman rendered his services from the year 2006 to June 2015 continuously and tenure of rendering services from the year March 2009 onwards is proved by the documentary evidence filed by the management as Ex.MW1/1 and Ex.MW1/2(colly) and oral evidence of the management witness-Arvind Sharma, Surveyor himself. From perusal of hand-receipts as well as muster-roll Ex.MW1/1 and Ex.MW1/2, it appears that initially claimant/workman was rendering his services for 2 hours from the year March 2009 to March 2011 and subsequently he rendered his services throughout the month excluding weekly off from 01.04.2012 to 31.03.2015. Thus, the fact alleged in the written statement that workman was employed for 2 hours service per day falsify from the documents filed by the management itself in the form of hand-receipts pertaining to the payment to the workman itself. Thus, it is a proved that subsequently he rendered his services

for so many years throughout except holidays as is mentioned in the documents filed by the management itself. Similarly, muster-roll Ex.MW1/2 reveals that he was further engaged for the month of June 2015 and July 2016 and rendered his services throughout the month.

9. Learned counsel of the management contended that workman discharged from his duty due to non-availability of fund for the year 2015, 2016 as there was no provision for part-time worker in the approved estimate of the year 2015-16 in A.R.(non-plan) forcing the management to discharge the workman. Learned counsel further contended that he was further engaged as casual worker on muster-roll basis against estimate of A.R. (non-plan) for the month of June 2015 and July 2015 till the said work is completed. There is nothing on record in the form of documentary evidence that there was no provision for part time worker in the approved estimate for the year 2015 in A.R.(non-plan). For the sake of argument, if it is presumed that contention of the learned counsel of the management is true then there should be documentary evidence to support this fact on record but management has not submitted the approved estimate of the year 2015-16 to prove the facts alleged in the written statement. Thus, I am not convinced with the argument that workman was retrenched due to non-availability of fund for the year 2015, 2016 as there was no provision for part-time worker in the approved estimate of the year 2015-16 in A.R.(non-plan).

10. Learned counsel of the workman has drawn my attention towards the reply filed by the management in pursuance of the notice issued by the Assistant Labour Commissioner where the engagement of the workman as part time casual worker from the year 2007 is admitted from alleged reply sent to the Assistant Labour Commisioner vide demand notice sent by the workman.

11. So far as the non-compliance of Section 25-F of the Industrial Disputes Act, 1947 is concerned, it is relevant to see whether action of respondent-management is in compliance of Section 25-F of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:-

> ***"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-***
>
> ***(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;***
>
> ***(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and***
>
> ***(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"***

12. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. It is admitted fact that neither notice is served upon the workman by the management nor retrenchment compensation is given to the workman. Similarly, the provision incorporated under Section 25-F(c) with respect to the notice to the appropriate-government has also not been complied. Thus, it can be observed that the provision of Section 25-F of the Industrial Disputes Act, 1947 is not complied in letter and spirit. In this connection, learned counsel of the management contended that for the application of Section 25-F of the Industrial Disputes Act, 1947, 240 days working in preceding year from the date of termination is mandatory and workman had not rendered 240 days service with the respondent-management. The argument advanced by the learned counsel of the management does not found support from the documents pertaining to the payment through hand-receipts and muster-roll.

13. This is a specific case of the workman that his services were terminated from June 2015 but this fact is not specifically denied by the respondent-management in Para 5 of the written statement where it is alleged that he was engaged as casual worker on muster-roll basis for the month of June and July 2015 till the said work is completed. It is a settled position of law that if there is no specific averment in the statement of defence with respect to the fact then as per the settled law, what is not specifically denied is deemed to be admitted. When a fact asserted is not specifically denied, no amount of evidence to prove the facts is required which are not in issue. It is pertinent to mention that management did not amend its written statement and went to trial on it. Moreover, as per documentary evidence, it is crystal clear that workman has rendered 240 days services before his alleged dis-engagement/retrenchment preceding one year from the month of June 2015. Number of days mentioned in the photocopies of the pay slips are conclusive proof that he was regularly rendering his services before the alleged retrenchment/termination that is why respondent/management has not specifically admitted the date of alleged termination in his written statement. Thus, I am of the considered opinion that workman had rendered 240 days of service in preceding year from the date of his termination as such, either one month notice

or retrenchment compensation of one month is required to be given to the workman as per provision incorporated under Section 25 of the Industrial Disputes Act, 1947.

14. Learned counsel of the workman contended that in the given scenario, facts and evidences on record, it is crystal clear that respondent/management has retrenched the workman with highhandedness without giving notice or retrenchment compensation as such, he is entitled for reinstatement with full back wages because he was forced to leave the job without any fault. Contrary to this, learned counsel of the management contended that nothing has been stated in the claim petition as well as affidavit filed by the workman with respect to his alleged post termination with respect to employment. Learned counsel of the management contended that workman was earning as usual by virtue of daily wager after termination as such, he is not entitled for any back wages. Learned counsel has placed reliance in the case of **"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya"** ***reported as (2013) 10 SCC 324*** and ***M/s Caparo Maruti Ltd. Vs. P.O. Industrial Tribunal and another, LPA No.793/2016(O&M) in Civil Writ Petition No.59/2014, dated 30.09.2019.***

15. The Hon'ble Supreme Court in the case of **Deepali Gundu Surwase(supra)** has held as under:-

"The propositions which can be culled out from the aforementioned judgments are:

(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages the adjudicating authority or Court may to take into consideration the nature of job and misconduct if any found proved against the employee/workman the financial condition of the employer and similar other factors.

(iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

16. The Hon'ble Punjab & Haryana High Court while ***Deepali Gundu Surwase(supra),*** and ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** as well as in the case of ***Tapash Kumar Paul Vs. BSNL,(2014) 15 SCC 313, Surender Kumar Verma Vs. Central Government Industrial Tribunal-cum-Labour Court,(1980) 4 SCC 443,*** has observed that there cannot be a straight jacket formula for awarding relief of back wages along with all the relevant benefits. More or less, it can be address to the discussion of the Tribunal with full back wages could be the normal rule and he party objecting to it must establish. The circumstances insisting the departure at this stage, the Tribunal while exercises its consideration keeping in view of the relevant circumstances but the discussion must be exercises judicious must be cogent and convincing and must be appear on the face on record. When it is within the discussion of the authority that something has to be done according to the rules, reasons and justice is not according to law and not he humour it is not arbitrary, vague but legal and regular.

17. It is pertinent to mention that the length of service of the workman is stated to be from the year 2006 to June, 2015 till the alleged termination. Hence, in the light of the above facts and legal preposition, this Tribunal is of the considered opinion that workman is entitled for reinstatement in service along with 50% back wages and the management is directed to reinstate the workman within three months from the date of the notification of the award.

18. Let copy of this award be sent to the Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 17 जून, 2021

का.आ. 390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार असम विश्वविद्यालय, दरोगाकोना, सिलचर, (असम) के प्रबंधतंत्र के संबद्ध नियोजकों और अध्यक्ष, असम विश्वविद्यालय आकस्मिक कर्मचारी संघ, सिलचर, कछार, (असम) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 04 of 2018 & 05 of 2018) को जैसा कि अनुलग्नक में दिखाया गया है प्रकाशित करती है।

[सं. एल-42011/30/2018 & एल-42011/57/2018-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th June, 2021

S.O. 390.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No.04 of 2018 & 05 of 2018) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the Industrial dispute between the employers in relation to, The Assam University, Dorgakona, Silchar, (Assam) and The President, Assam University Casual Employees Union, Silchar, Cachar, Assam.

[No. L-42011/30/2018 & L-42011/57/2018-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR, COURT, GUWAHATI, ASSAM

Present: Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B.,
Presiding Officer, CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 04 of 2018 & Ref. Case No. 05 of 2018

In the matter of an Industrial Dispute between :-

Workmen represented by the President,
Assam University Casual Employees Union,
Assam University, Dorgakona, Silchar, Cachar, Assam. ...Claimants/Union

-Vrs-

Assam University, Dorgakona, Silchar, Assam. ...O.P/Management

APPEARANCES

For the Workmen. : Mr. H.K.Dey, Ld. Advocate
For the Management. : Mr. Defenso Man, Ld. Advocate

Date of Award:19.03.2021

AWARD

1. These Industrial Disputes between "Assam University Casual Employees Union" and the management of "Assam University, Dorgakona, Silchar" were referred to this Tribunal by the appropriate Government vide notification No.-L-42011/57/2018-IR(DU) dated 16/08/2018 and notification No. L-42011/30/2018-IR(DU) dated 28/08/2018 with the following schedules respectively.

SCHEDULE

"Whether it is justified on the part of management of Assam University, Dorgakona, Silchar-788011 to suo motu extend the life of Memorandum of Settlement dated 02.08.2016 where there was an express clause (Clause No.6) Contrary to it. If not, what relief can be granted to the members of the union. 2. Whether it is justified on the part of management not to take part in wage negotiation and arrive at settlement as per Clause No.5, of Memorandum of Settlement dated 02.08.2016. If not, what relief can be granted to the members of the union'

&

"Whether it is justified on the part of management of Assam University, Dorgakona, Silchar-788011 to Suo motu extend the life of Memorandum of Settlement dated 02.08.2016 where there was an express clause (Clause No.6) Contrary to it. If not what relief can be granted to the members of the union. 2. Whether it is justified on the part of management not to take part in wage negotiation and arrive at Settlement as per Clause No.5, of Memorandum of Settlement dated 02.08.2016. If not what relief can be granted to the members of the union'.

2. After receipt of the references, notices were issued to the concerned parties.

The parties appeared. On hearing both the parties, the Ref. Case No.4 of 2018 and Ref. Case No.5 of 2018 were amalgamated by this Tribunal vide order dated 27.11.2018 passed in Ref. Case No.04. of 2018. The concerned workers' Union submitted claim statement in this Ref. case which was deemed to be claim statement in both the matters.

3. By filing the claim statement the workmen side stated that on being satisfied about the eligibility criteria, management employed all the 112 workmen on different dates and years from the year 1996 in different posts and in different divisions of the university. It is stated that though their initial employment was for a period of 89 days , all have been continuing in their respective employment uninterruptedly since their initial appointments with technical break of one/two days. The Union made several requests before the management for their regularization but the management did not pay any heed to it. It is stated that instead of regularization the management chose to recruit fresh persons of their choice as contractual employees. It is also stated that since the management failed to address their grievances they sought intervention of the Assistant Labour Commissioner (Central), Silchar and after conciliation, an amicable settlement was arrived at on 02.08.2016 between the parties on the following terms:

"(1) The management of Assam University has agreed to pay per day (take Home) wages/salary for skilled employees as Rs.450/- (Rupees four hundred Fifty) & Rs.400/- (Rupees Four hundred) for unskilled employees respectively.

(2) The wages/salary of the employees shall be paid for 30 (thirty) or 31)thirty one) days as the month may be.

(3) The management shall ensure that the wages/salary of the employees shall be paid on or before 7th of the every month.

(4) The Memorandum of Settlement (MOS) shall be enforceable w.e.f. 26.06.2016.

(5) The Memorandum of Settlement (MOS) shall be valid for 06(six) months. At the end of 06 (six) months Management of Assam University & the Union shall negotiate the wages/salary and arrive at a settlement. The settlement shall be tripartite in nature.

(6) The memorandum of Settlement (MOS) can be extended if both the parties i.e. management and the union agrees to it.

(7) The Dearness Allowance (DA) shall be adjusted as when Central Government declares it. The rate shall be same to that of regular university employees. In current wages DA=0

(8) The management of Assam University shall take all responsibility in implementing this MOS dated 02.08.2016.

(9) In case of any ambiguity in interpretation of the terms of settlement, the interpretation of Conciliation Officer-cum-Assistant Labour Commissioner (Central), Silchar shall be final & binding for both the parties"

It was further stated that the management on 10.08.2016 notified the wage rate as Rs. 450/- & Rs.400/- for skilled and unskilled employees respectively and decided that the DA shall be adjusted as per Central Government declaration. With the change of conditions after the Central Government's Notification, the existing DA of the University's regular employees were merged with their and the pay-scale was revised upward. It was also claimed that in view of the settlement dated 02.08.2016 the workers in the dispute were also

entitled to get the revised DA. It was stated that Clause (6) of the MOS provides that it's validity can be extended if both the parties agree to it. The aforesaid settlement came to an end on 25.12.2016 and the Union made submission before the management for subsequent extension of the settlement. But the management did not take any step. Since the management did not take any positive step, the union sought intervention of the ALC(C). The ALC (C) also clarified to the management for compliance of the settlement and the management unilaterally and illegally extended the validity of the Tripartite Settlement for a period of 6 months on 21.02.2017 without any valid authority. The Union agitated and reported the matter to the Conciliation Officer, ALC (C) and the Dy. Chief Labour Commissioner (Central), Guwahati. Since all efforts of the conciliation Officer for resolving the dispute ended in failure the matter was reported to the appropriate Government which referred the dispute for adjudication before this Tribunal. The Union also prayed to direct the management to implement the terms and conditions of the Settlement dated 02.08.2016 and to fulfill the demands of the workers from 25.12.2016 granting all benefits as available as per law.

4. The union also filed additional claim statement after perusing the written statement submitted by the management and denied and disputed those claims which, according to them, are not borne out of records and are against the spirit and the terms of the settlement dated 02.08.2016.

5. The management filed their written statement and denied the points raised by the Union and stated that the validity of the MOS was extended for smooth and continuous payments to the concerned workers and that such extension was in no way detrimental to the interest of the concerned workers. The management also stated that the University is duty bound to follow the rules and policies formulated by it. The management further stated that after the allegation against the management for non-implementation of Clause No.7 of the MOS, the management passed an office order complying the MOS and after releasing the salary of the casual employees, the management started negotiation. The management prayed to dismiss the case.

6. When the matter was taken up for recording of the evidence, workman side examined 2 witnesses namely Smti Amita Yadav and Sri Daniklal Bhor. In their respective evidence-in-chief, submitted through Affidavit, the witnesses stated that the concerned workmen were in casual employment of the management of Assam University for several years and for amicable settlement of the dispute several rounds of discussions were held in presence of the Conciliation Officer i.e. A.L.C (C), Silchar. It was further stated that since no meaningful resolution of the disputes were resolved the concerned Officer sent the matter to the appropriate Government along with "failure report" whereupon the appropriate Government referred the matter to this Tribunal. During the evidence the witnesses proved certain documents namely Registration Certificate of the union (Exhibit-1), authorization to depose on behalf of the Union (Exhibit-2), continuation of the concerned workers as casual employee with one or two days break (Exhibit-3). It was further stated that the issue related to the wages were taken up and after long discussion an amicable settlement dated 02.08.2016 was arrived at between the management and the Union but even then the DA etc. paid to the regular employees were not being paid to the concerned contractual workers. It was also stated that the said settlement (Exhibit-7) was for a period of six months and it could be extended or renewed only at the consent of both parties to the agreement. It appears from the evidence of the workman side that the grievance of the concerned workers was to ensure that the concerned workers can be paid DA etc. equally as per their regular counterparts in the establishment of the management i.e. Assam University. In spite of giving several dates the management side did not appear to cross-examine the witnesses. On perusal of the matters on record and also on consideration of the written statement submitted by the management side it is clear that the concerned employees were casual/contractual labourers under the Assam University and that there was a settlement (Exhibit-7) containing the following 9 terms and conditions between the management of the Assam University and the Representative of Assam University Casual Employees Association.

"(1) The management of Assam University has agreed to pay per day (take Home) wages/salary for skilled employees as Rs.450/- (Rupees four hundred Fifty) & Rs.400/- (Rupees Four hundred) for unskilled employees respectively.

(2) The wages/salary of the employees shall be paid for 30 (thirty) or 31) thirty one) days as the month may be.

(3) The management shall ensure that the wages/salary of the employees shall be paid on or before 7th of the every month.

(4) The Memorandum of Settlement (MOS) shall be enforceable w.e.f. 26.06.2016.

(5) The Memorandum of Settlement (MOS) shall be valid for 06(six) months. At the end of 06 (six) months Management of Assam University & the Union shall negotiate the wages/salary and arrive at a settlement. The settlement shall be tripartite in nature.

(6) The memorandum of Settlement (MOS) can be extended if both the parties i.e. management and the union agrees to it.

(7) The Dearness Allowance (DA) shall be adjusted as when Central Government declares it. The rate shall be same to that of regular university employees. In current wages DA=0

(8) The management of Assam University shall take all responsibility in implementing this MOS dated 02.08.2016.

(9) In case of any ambiguity in interpretation of the terms of settlement, the interpretation of Conciliation Officer-cum-Assistant Labour Commissioner (Central), Silchar shall be final & binding for both the parties"

7. On perusal of terms of settlement it appears that as and when the DA declared by the Central Government would be paid to the regular employees, the same would also be paid to the concerned workers. Another grievance of the workers was that after implementation of the 7th Pay commission the DA of the regular employees were merged with the Pay resulting in the upward revision of their pay. But this benefit was not extended to the concerned workers. In Clause-5 of the settlement it was mentioned that the said Memorandum of Settlement shall be valid for six months and at the end of six months the management of Assam University shall negotiate the wages and salary and shall arrive at a settlement which shall be a Tripartite Settlement. On perusal of the evidence of the workman side it appears that though in terms No.6 of the Settlement it was mentioned that the terms of settlement beyond the period of six months can be extended only if both the parties i.e. the management and the Union agree to it, the management choose to extend the terms without consulting the Union. This action of the management was clearly not as per the terms of the MOS and hence it is held to be not justified.

8. In view of the above, it is held that the action of the management to extend the terms of the Settlement beyond six months without the consent of the Union was not as per the terms of the Settlement and hence was not justified. It was also found that the management did not follow the terms No.5 of the Settlement where it was provided that at the end of six months the management of Assam University and the Union shall negotiate the wages/salary and arrive at a new settlement. It is therefore, held that the management of the Assam University shall hold discussion with the concerned workers or their representative within 90 days from the date of the receipt of the award and arrive at a fresh settlement in regard to the payment of wages etc to the concerned workers. The matter stands disposed of with the award as indicated above.

Given under the hand and seal of this Tribunal this 19th day of March, 2021.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 17 जून, 2021

का.आ. 391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राष्ट्रीय थर्मल पावर कॉर्पोरेशन लिमिटेड (एनटीपीसी लिमिटेड), कायमकुलम, अलाप्पुझा, (कोचीन), अजमल हुसैन सुरक्षा एजेंसी, एर्नाकुलम, (कोचीन), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री ललन आर, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 11/2021) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है।

[सं. एल-42025/07/2021-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th June, 2021

S.O. 391.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2021) of the Central Government Industrial-Tribunal-cum Labour Court Ernakulam, as shown in the Annexure, in the Industrial dispute between the employers in relation to The National Thermal Power Corporation Ltd. (NTPC Ltd.), Kayamkulam, Alappuzha, (Cochin), Ajmal Hussain Security Agency, Ernakulam, (Cochin) and Shri. Lalan R. Worker.

[No. L-42025/07/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL– CUM – LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer.

(Thursday the 25th day of March 2021)

ID. No. 11/2021

Workman : Shri.Lalan R.
Valachirayil House
Valiyaparambu P.O.
Karthikappally
Alappuzha – 690516

By Adv. C. A. Rajeev

Management : 1. The National Thermal Power Corporation Ltd. (NTPC Ltd.)
Choolatheruvu P.O.
Kayamkulam
Alappuzha – 690506

2. Ajmal Hussain Security Agency
Room No.60/479 C1
Koithara Complex
Koithara Road, S. Panampilly Nagar
Ernakulam – 682036

This case coming up for hearing on 25.03.2021 and the same day this Tribunal-cum-Labour Court passed the following.

AWARD

1. Present industrial dispute is filed U/s 2A(2) of the Industrial Disputes Act,1947 as the conciliation effort made before the Conciliation Officer failed.

2. The workman was seeking a declaration that the action of the management in terminating the service of the workman w.e.f. 31.05.2020 is illegal and unjust. He also sought a further relief of reinstatement in service of NTPC, Kayamkulam with full back wages, continuity of service and all other attended benefits.

3. Summons was issued to management 1, management 2 and the workman. Management 1 and 2 entered appearance. The learned Counsel for the workman entered appearance and filed a memo from the workman stating that he is not interested to proceed with the above case. He also prayed that he may be permitted to withdraw the industrial dispute.

4. Since the workman is not interested in pursuing this industrial dispute filed U/s 2A(2) of the ID Act, there cannot be any adjudication regarding the claim of the workman. Hence a 'no dispute' award is passed in this industrial dispute.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 25th day of March, 2021.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 17 जून, 2021

का.आ. 392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राष्ट्रीय थर्मल पावर कॉर्पोरेशन लिमिटेड (एनटीपीसी लिमिटेड), कायमकुलम, अलाप्पुझा, (कोचीन), अजमल हुसैन सुरक्षा एजेंसी, एर्नाकुलम, (कोचीन), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री चंद्रदास के., कामगार

के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 20/2021) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है।

[सं. एल-42025/07/2021- आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th June, 2021

S.O. 392.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2021) of the Central Government Industrial-Tribunal-cum Labour Court Ernakulam, as shown in the Annexure, in the Industrial dispute between the employers in relation to The National Thermal Power Corporation Ltd. (NTPC Ltd.), Kayamkulam, Alappuzha, (Cochin), Ajmal Hussain Security Agency, Ernakulam, (Cochin) and Shri.Chandradas K., Worker.

[No. L- 42025/07/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM– LABOUR COURT, ERNAKULAM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer.

(Thursday the 25th day of March 2021, 1942)

ID. No. 20/2021

Workman : Shri.Chandradas. K
Mulayil Kunnel House
Cheruthana P.O.
Alappuzha – 690517

By Adv.C. A. Rajeev

Management : 1. The National Thermal Power
Corporation Ltd. (NTPC Ltd.)
Choolatheruvu P.O.
Kayamkulam
Alappuzha – 690506

2. Ajmal Hussain Security Agency
Room No.60/479 C1
Koithara Complex
Koithara Road, S. Panampilly Nagar
Ernakulam – 682036

This case coming up for hearing on 25.03.2021 and the same day this Tribunal-cum-Labour Court passed the following.

AWARD

1. Present industrial dispute is filed U/s 2A(2) of the Industrial Disputes Act,1947 as the conciliation effort made before the Conciliation Officer failed.

2. The workman was seeking a declaration that the action of the management in terminating the service of the workman w.e.f. 31.05.2020 is illegal and unjust. He also sought a further relief of reinstatement in service of NTPC, Kayamkulam with full back wages, continuity of service and all other attended benefits.

3. Summons was issued to management 1, management 2 and the workman. Management 1 and 2 entered appearance. The learned Counsel for the workman entered appearance and filed a memo from the workman

stating that he is not interested to proceed with the above case. He also prayed that he may be permitted to withdraw the industrial dispute.

4. Since the workman is not interested in pursuing this industrial dispute filed U/s 2A(2) of the ID Act, there cannot be any adjudication regarding the claim of the workman. Hence a 'no dispute' award is passed in this industrial dispute.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 25th day of March, 2021.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 17 जून, 2021

का.आ. 393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम.सी. हरिदास सहायक महाप्रबंधक कार्यकारी जहाज प्रबंधन प्राइवेट लिमिटेड (कोचीन), एक्जीक्यूटिव शिप मैनेजमेंट प्राइवेट लिमिटेड, मुंबई, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री महेश एम. पणिक्कर, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 21/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है।

[सं. एल- 42025/07/2021- आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th June, 2021

S.O. 393.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2018) of the Central Government Industrial-Tribunal-cum Labour Court Ernakulam, as shown in the Annexure, in the Industrial dispute between the employers in relation to The M.C. Haridas Assistant General Manager Executive Ship Management Pvt. Ltd. (Cochin), Executive Ship Management Pvt Ltd., Mumbai and Shri.Mahesh M. Panicker.

[No. L-42025/07/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULAM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer.

(Monday, the 8th day of March, 2021)

ID. No. 21/2018

Workman/Union : Shri.Mahesh M. Panicker
Puthen Purayil
Kadapra P.O.
Kumbanad
Thiruvalla - 689547

By Adv. A. K. Maya Krishnan

Management : 1. M.C. Haridas
Assistant General Manager
Executive Ship Management Pvt. Ltd.
ESM Complex
St. Rita Road, Vyttila
Kochi - 682019

2. Executive Ship Management Pvt. Ltd.
Sai Commercial Annexee
2nd Floor, BKS Devshi Marg
Govandi East
Mumbai

By Adv.Abraham Joseph Markos

This case coming up for hearing on 26.02.2021 and this Tribunal-cum-Labour Court on 08.03.2021 passed the following.

AWARD

1. The present industrial dispute is filed U/s 2A(2) of Industrial Disputes Act, 1947.

2. According to the workman, he joined the service of the second management on 11.03.2007. He was appointed as Deck Cadet and thereafter has been promoted as a third officer of the fleet. While so, he was diagnosed HIV positive status in the year 2014 and thereafter the management refused to take him into employment. Being aggrieved by the termination, the worker lodged a complaint before the CGIT on 09.02.2016 and it was transferred to Deputy Chief Labour Commissioner, Kochi. The Deputy Chief Labour Commissioner conducted reconciling meetings and the attempts failed because of the adamant attitude of the management.

3. The notice was issued to both the managements and also the workman. The first management remained absent from the very beginning and the first management was set ex-parte vide order dt.17.06.2019. The second management filed IA no.340/2019 requesting that the industrial dispute is not maintainable. There was no representation for the workman in the proceedings from 03.12.2019 onwards. When the IA was posted for hearing, the learned Counsel representing the workman filed a memo to the effect that the workman is not interested to continue with the industrial dispute and also requested that he may be permitted to withdraw the complaint U/s 2A(2) of the Industrial Disputes Act. As the workman is not interested in pursuing the industrial dispute no purpose will be served by adjudicating the proceedings, any further.

4. In the above circumstances, a 'no dispute' award is passed as the workman is not interested in proceeding with the industrial dispute.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 8th day of March, 2021.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 18 जून, 2021

का.आ. 394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार संयुक्त सचिव, केंद्रीय माध्यमिक शिक्षा बोर्ड, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और श्री बसंत सिंह, नई दिल्ली और श्री नरेंद्र कुमार, नई दिल्ली ,कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 37/2011) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को 18.06.2021 को प्राप्त हुआ था।

[सं. एल-42012/276/2010-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th June, 2021

S.O. 394.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/2011) of the Central Government Industrial-Tribunal-cum Labour Court -2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Joint Secretary, Central Board of Secondary Education, New Delhi and Shri Basant Singh, New Delhi and Shri Narendra Kumar, New Delhi Workers which was received by the Central Government on 18.06.2021.

[No. L-42012/276/2010-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 37/11

Date of Passing Award- 17th March, 2021

Between:

1. Shri Basant Singh,
6/106, Subhash Nagar,
New Delhi-110027. ... Claimants

2. Shri Narendra Kumar
S/o Shri Samey Singh,
B-42, Mata Wali Gali, Johri Pura,
New Delhi.

Versus

The Joint Secretary,
Central Board of Secondary Education,
2- Samudaik Centre, Preet Vihar,
Delhi-110092
New Delhi ... Management

Appearances:-

Claimant in person (A/R) : For the claimant.

None for the management (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s Central Board of Secondary Education, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/276/2010 (IR(DU) dated 25/04/2011 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Central Board of Secondary Education in terminating the services of Shri Basant Singh and Shri Narendra Kumar, Junior Assistants working on daily wage basis w.e.f 04/02/2009 is legal and justified? What relief the workmen are entitled to?"

Both the claimants have filed their claim statements separately seeking redressal of their grievance. Both the claimants have prayed for a direction to the management to treat them as senior candidates as per their actual seniority, reinstate them in service with full back wage and continuity of service on permanent basis with appropriate scale of pay and compensate them for the mental agony and financial loss suffered. The claimant Narendra has stated that he had joined the management CBSE on 5th February 1996 as a junior Assistant on daily wage basis. Though, he had worked for the management continuously for 16 years, the management in order to deprive the claimant of his lawful rights use to create artificial break of few days between periodical appointments though the nature of work discharge by him was of permanent nature. The workman was recruited through Employment Exchange on the advertisement issued by the management. The workman was struggling and making representations for absorption against permanent vacancy as the nature of duty discharge by him was perennious. The claimant and many others like him had approach the Hon'ble High Court and a direction

was issued to the management for preparation of a seniority list of the persons engaged in daily wage basis and to consider their candidature according to their seniority for absorption against regular vacancy. The Hon'ble High Court had also directed for relaxation of their age limit of the persons working on daily wage basis. In compliance to the said direction of the Hon'ble High Court a common seniority list was prepared by the management wherein the name of the workman Narendra was at serial no. 36. Thereafter, the management inform the Regional Officer that approval for extension the period of employment of the daily wagers has been made upto 30th June 2008 But they should not be allow to work for more than 220 days in a calendar year. While the matter stood thus on 30.05.2008 the management served a notice on the claimant leveling false allegations and informed that his service is no more required. The workman gave reply to the memo denying the allegations and considering the clarification given by him the management recalled the claimant who continues to work. Suddenly the management communicated an order dated 04.02.2009 terminating the service of the claimant on the ground that he refuge to do the duty assigned to him by a senior officer. The claimants approach the management and requested for reinstatement which remained pending with them. The claimant was forced to approach the Central Administrative Tribunal seeking relief which was dismissed as not maintainable. Challenging the same the claimant filed a writ petition before the Hon'ble High Court of Delhi which too was dismissed as not maintainable. The claimant then raised a dispute before the Labour commissioner where a conciliation proceeding was initiated and on failure of the conciliation the appropriate government referred the matter to this tribunal for adjudication.

Similarly the claim of the claimant Basant Singh is that he started working on daily wage basis as a Junior Assistant in the office of the management in September 1995. Though he was working continuously the management was creating artificial break of few days after 6 months in order to deprive him of the claim to be absorbed against permanent vacancy. The nature of work discharge by the claimant being perenious he was often demanding to be absorbed against permanent basis as his employment was not through the back door but through the Employment Exchange pursuant to advertisement made by the management. Having failed in his effort to be regularized the claimant and others had approach the Hon'ble High Court wherein a direction was issued to the management for preparation of common seniority list and to give opportunity to the persons from out of that list according to their seniority for absorption against permanent vacancies. The name of this claimant Basant Singh was in serial no.1 of the list. At this juncture the management made advertisement for the posts of Junior Assistant and Executive Assistant. The claimant Basant Singh being qualified and eligible for both the posts submitted his application and admit card was issued to him to appear in the examination. The claimant appeared and being successful in the examination was appointed as a Junior Clerk. But the management on 12.02.2007 illegally terminated him and at the time of termination the mandatory provision of law were not followed. The persons junior to him were allow to work. The claimant on 16.02.2007 served a legal notice on the management alleging illegal termination but the management did not reply the same. He then filed a writ petition before the Hon'ble High Court of Delhi challenging the order dated 12.02.2007 terminating his service. The Hon'ble High Court by order dated 26.03.2007directed the management to reengage the workman and not to disengage him without giving termination notice. In compliance thereto the management engaged him but terminated again. The claimant/workman served a notice on the Regional Office of CBSE alleging that he is reporting for duty but his attendance is not being marked. Thus the workman was again taken for work and he continued as such till 30.05.2008 when another notice was served on him stating therein that the service of the workman is no more required. The notice was on the basis of some baseless allegations. In the notice he was called upon to explain as to why his names shall not be removed from the seniority list of the daily wagers. The workman gave reply denying the allegations. Thus, on 10.07.2008 the management issued a letter directing the workman to report for duty on 15.07.2008 and the workman duly reported for duty and worked till December 2008. In December 2008 the management passed an order terminating the service of the workman on the ground that his service is not satisfactory. Finding no other way the workman lodged a complaint to the secretary Ministry of Human Resource Development New Delhi and also filed a written complaint before the Assistant Labour Commissioner Delhi where a conciliation proceeding was initiated. But for the non cooperation of the management no conciliation could be reached and the Labour Commissioner issued a failure report as a result of which the Appropriate Government referred the matter for adjudication by this tribunal. It has further been stated by the claimant that on 28.01.2011 management issued a letter to the workman for his reinstatement into service treating him as a new recruit. On 27.05.2011 when the claimant reported for duty he was orally instructed to report joining at CTET Cell 17 Rouse Avenue New Delhi. But his joining report was not accepted in the later office. When the claimant went back to the office of the respondent at Preet Vihar the Secretary Administration assured him that he will be transferred to the Legal Cell. But in fact the workman could not join thereafter and since then he is unemployed. Thus, the claimant in this claim petition has prayed for a direction to the management to reinstate him into service treating him as a senior candidate with full back wage continuity of service and all other consequential benefits. He has also prayed for a direction to the management to compensate the mental agony suffered by him.

The management being noticed appeared and filed WS stating that CBSE is an autonomous body having its own rules governing its business and activities. It has been stated that regular posts in different

categories have been created in the board to manage the normal work load of the permanent establishment of CBSE. As and when the seasonal workload increases for special job requirement CBSE engages casual employees. Those casual workers are required to discharge the seasonal works only. The Hon'ble High Court of Delhi in the year 1996 issued a direction to follow the principal of first come last go in absorbing the casual employees against permanent vacancies. This direction was issued since several writ petitions were filed before the Hon'ble High Court of Delhi by the daily wage employee claiming for regularization of their service in CBSE. As per the direction the management CBSE has issued a circular to that effect on 02.03.2005 displaying the seniority list of daily wage junior assistant and peons. The decisions of CBSE and circular dated 02.03.2005 for preparation of seniority list was again challenge before the Hon'ble High Court of Delhi and the Hon'ble High Court while disposing the writ petition observed that the management CBSE in order to fill up the vacancies in the regular cadre shall considered the names of the persons appearing in the seniority list and shall develop a mechanism to delete the names of the persons from that list who would fail to respond on getting the notice of the management for selection to permanent post. Following the said procedure the name of claimant Basant Singh was deleted from the list of seniority and challenging the same he had filed a suit through DLSA. After several hearing and as per the settlement between the parties he was taken back to service subject to good behaviour. Both the workmen had taken a part in the written/skill test and interview held on 16.03.2013 for appointment on regular basis. But both the workmen could not clear the type test held on that day. Keeping in mind the long years of service rendered by them as Junior Assistant on daily wage basis a sympathetic consideration was given. Whereas claimant Basant Singh was offered a regular appointment and posted in CBSE Regional Office Guwahati by order dated 01.04.2013 and claimant Narender Kumar was offered regular appointment in the Regional Office Chennai subject to clearing another type test to be conducted by CBSE for both of them they did not agreed to the same. Thus, the management has pleaded that the claim petition is anfractuous for lack of cause of action and liable to be dismiss. The other stand of the management is that the claim of the workman having been meted out a no dispute award should be passed.

On the rival pleadings the following issues were framed for adjudication.

ISSUES

1. Whether reference order still required are answers after appointment of the claimants on regular basis vide order dated 01.04.2013.

2. As in terms of reference.

The claimant Basant Singh testified as WW1 but his cross examination was marked nil as the management did not choose to cross examine him. While tendering the evidence the claimant Basant Singh placed several documents on record which have been marked exhibit in a series of WW1/1 to WW1/21. The other claimant Narender Kumar though had filed affidavit did not remain present to tender the same and evidence for the claimants was closed. No oral or documentary evidence has been adduced by the management. the documents filed by WW1 include the advertisement pursuant to which the claimants were appointed the seniority list prepared by the management pursuant to the direction of the Hon'ble High Court, the order of Hon'ble High Court, the memos issued from time to time terminating the service of the claimants and again calling them to join the service.

FINDINGS

ISSUE NO. 1

The claimant Basant Singh while deposing has stated exactly in the line of the statement made in the claim petition. In his oral testimony he has admitted about the initial appointment as a daily wage junior clerk and has also stated that he was disengaged by the management without any appropriate reason. A writ petition being filed the Hon'ble High Court directed for preparation of seniority list and absorption of the claimants against permanent vacancies following due procedure. The management though prepared a seniority list did not take steps for regularizing their service. When they approached the Labour commissioner steps were taken for conciliation but the same failed due to non cooperation of the management. Then the commissioner submitted a failure report leading to reference of the matter by the Appropriate Government to this tribunal. The management having come to know about the same called the claimants by letter dated 28.01.2011to reinstate them in service. They were treated as fresh candidates and asked to join in the CTET Cell of the management at Rouse Avenue. When the claimants reported at Rouse Avenue there joining reports were not accepted which forced them to come back to the office of the management at Preet Vihar. There also their joining reports were not accepted and since then the claimants are unemployed and leading a miserable life.

Though in the WS the management has stated that by a memorandum dated 01.04.2013 both the claimants have been appointed against regular vacancies and transferred to Guwahati and Chennai respectively, no oral or documentary evidence to that effect has been adduced. Hence, accepting the unrebutted evidence adduced by the claimants this tribunal is of firm opinion that the respondent management has illegally

terminated the service of the claimants w.e.f 04.02.2009 and this issue is accordingly answered in favour of the claimants.

ISSUE NO. 2

As stated in the preceding paragraph no evidence has been adduced by the management to rebutt the claim of the workman. Considering the undisputed and uncontroverted oral and documentary evidence adduced by the claimants, it is held that the claimants are entitled to the relief of reinstatement into service w.e.f 04.02.2009 with the pay scale admissible to junior assistant from time to time, appointed against regular vacancies as in the WS the management has taken a plea of appointment of the claimants which leads to conclusion that management has vacancy in regular cadre of Junior Assistant alongwith compensation for the mental agony suffered by them. Hence, ordered.

ORDER

The claim be and the same is allowed on contest. The termination of the claimants w.e.f 04.02.2009 is held to be illegal. The management is directed to reinstate them in service against permanent vacancies w.e.f 04.02.2009 with the pay scale admissible to the junior assistants from time to time, appointed on regular basis. The management is further directed to pay Rs. 100,000/- to each of the claimants towards compensation for mental agony and litigation expenses. The management is directed to reinstate the claimants within 2 months from the date of publication of the award and pay them the arrear salary and compensation within 3 months from the date of the publication of the award. This amount so accrued shall not carry any interest if paid within the time stipulated. If the management would fail to comply the direction within time the amount shall carry interest @9% per annum from the date of publication of award till final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Date: 17.03.2021

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 18 जून, 2021

का.आ. 395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रजिस्ट्रार, एचएनबी गढ़वाल केंद्रीय विश्वविद्यालय, श्रीनगर, गढ़वाल (यूके) के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती शीला ध्यानी, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 97/2011) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को 18.06.2021 को प्राप्त हुआ था।

[सं. एल-42011/50/2011- आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th June, 2021

S.O. 395.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 97/2011) of the Central Government Industrial-Tribunal-cum Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, HNB Garhwal Central University, Srinagar, Garhwal (U.K) and Smt. Sheela Dhyani, Worker which was received by the Central Government on 18.06.2021.

[No. L-42011/50/2011-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 97/2011

Date of Passing Award- 4th March, 2021

Between:

Smt. Sheela Dhyani
W/o Shri Suman Pandey,
Panwar Bhawan, Near Convent School,
Srinagar, Pauri Garhwal
Garhwal (U.K.) ... Claimant

Versus

The Registrar,
HNB Garhwal Central University,
Srinagar, Garhwal (U.K)
Garhwal (U.K) ...Management

Appearances:-

Shri Sanjay Sharma (A/R) : For the claimant.

Shri K.H. Gupta (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s HNB Garhwal Central University, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/50/2011 (IR(DU) dated 10/10/2011 to this tribunal for adjudication to the following effect.

"Whether the action of the management of HNB Garhwal Central University, in terminating the services of workman Smt. Sheela Dhyani W/o Shri Suman Pandey w.e.f. 31/05/2002, without complying with section 25-F,G,H is legal and justified? What relief the workman is entitled to?"

Both parties being put to notice and filed their claim statement and WS respectively.

The claimant has stated that she had been working as a Typist with the management University during the period from 13.05.1996 to 31.03.2001. During this period she was discharging her duties with utmost sincerity. Initially she was posted in the evening shift of the education department in B.ED course and then in the home science department. She also completed continuous work for more than 240 days in a calendar year. The vice chancellor of the respondent university being the sole employer had appointed her as a temporary employee. When she was discharging hers duty diligently made several representations to the management for regularization her service as she was discharging the work of permanent nature. The management without paying heed to the representation made appointment of persons junior to the claimant as permanent employees against the said post. The clamant obtained information in that regard through RTI. Being aggrieved by that the management terminated the service of the claimant illegally in gross violation of law on 31.05.2002. at the time of termination neither the rule of last come first go was followed nor any notice of termination or notice pay in lieu of notice, or retrenchment compensation was paid. Finding no other way the claimant raised a dispute before the labour commissioner and the claim petition was filed before the labour court Dehradun. The said labour court by order dated 12.10.2010 came to hold that the tribunal has no jurisdiction to adjudicate the matter as the University is governed under the Central University Act. Thereafter the central government forwarded the terms of reference to this tribunal for adjudication. By filing the claim petition the claimant has prayed that the management be directed to reinstate the workman with full back wages continuity of service and other consequential benefits and further be directed to pay the arrear salary.

The management filed WS denying the stand taken by the claimant. it has been stated that the claimant was never appointed by the University Management and their never existed any employer employee relationship between them. It has been stated that the HNB Garhwal University was a state university upto 14January 2009 and was upgraded as a central University under the Central Universities Act w.e.f 15.01.2009. During that up gradation there were 171 contractual/daily wager employee engaged by head of the department/project in-charge of the University who infact are not the appointing authorities nor they have any order from the vice chancellor for making such appointment. During the state university status some of the departments might have engaged

daily wager without the approval of the competent authority and such appointments are illegal. Those appointments might have been for a fixed term to provide back door entry to the university employment. When the university came to be governed under the Central University Act none of those 171 contractual/daily rated employees were engaged against substantive vacancy. In the year 1988 the government had an issued an order sanctioning 418 post in the university, clearly specifying that no other engagement of daily wager would be made in the university. The 171 daily wager/contractual labours engaged by the project in-charge were never paid salary by the university and their salaries might have been released from the project fund or from the self financing budget head of the department. It has also been stated that out of those 171, 6 persons were removed after 4 to 6 years of their engagement. When the fact of the illegal engagement and back door entry in the service of the university was brought to the notice of the Hon'ble High court the state government constituted a committee for inquiry into the matter. The committee found the appointment to be illegal and irregular and recommended for an action against the persons responsible. The present claimant is one among those 171 daily wager/contractual employee engaged without any permission or approval of the university and the person who had appointed her is not authorized to do so. With this the management has prayed for dismissal of the claim petition without giving any relief to the claimant.

On the rival pleading following issues were framed for adjudication.

1. Whether the action of the management of HNB Garhwal central University in terminating the services of Smt. Sheela Dhyani we.f. 31.05.2002 without complying the provisions of section 25-F, G and H is legal and justified? If so its effect
2. What relief the workman is entitled to?

The claimant examined herself as WW1 and filed her statement inform of affidavit. Alongwith the affidavit she had filed several documents marked in a series of WW1/1A to WW1/G. These documents include the muster roll some certificate and letters issued to the management, representations made to the chief minister, the information obtained under RTI for showing absorption of persons Junior to the claimant in permanent post the copy of the claim filed before the Labour commissioner etc. she was cross examined at length by the management. Similarly one Anil Kumar Jha the Registrar of the University testified as MW1 no document has been filed by the management.

At the outset of the argument the Ld. Counsel for the workman submitted that the documents filed by the claimant supported by the oral evidence clearly proves that she was appointed as a typist on 13.03.1996 and had worked upto June 2001. She had worked continuously for 240 days in a calendar year. Her service was terminated illegally which amounts to unfair labour practice. It is the stand taken by the management during argument that no evidence has been placed on record regarding her employment by the competent authority and she was never in continuous service for more than 1 year. The university is guided by the UP state University Act 1973 which has a provision for appointment by the executive council when the claimant claims to have been appointed in the year 1996. Her engagement might have been done through back door by a person not authorized to do so and thus the said appointment does not confer any right for regularization of the claimant. He also argued that when the university was a state university some illegal appointments were made and those appointees were removed from service when the university became a central university. On the rival argument and pleadings a decision is to be taken if the respondent university had terminated the service of the claimant illegally and without the complying the provision of law.

FINDINGS

ISSUE NO. 1

The claimant while testifying as WW1 has stated that she was appointed on 13.03.1996 had worked upto 31.05.2001. At the time of cross examination she had stated that, the then registrar of the university had issued appointment letter to her. But subsequently the said original appointment letter was taken by the dealing assistant of the account section for preparation of the salary bill and never returned the same. While placing the attendance register on record she had stated that her salary was being drawn every month by the Central Accounts Department of the University. The photocopy of some pages of the attendance register has been placed on record. Not only that she had filed some pages of the salary register of the year 1996 which go to show that the claimant was getting salary from the University and her salary bill was signed and passed by the coordinator of B.ed course(evening shift) of the management university. She has also filed the photocopy of the attendance sheet for the month of August 2001to April 2002 which contains the signature of the reporting officer i.e. Head of the department of home science branch of the respondent University. She has also filed the copy of the advertisement dated 14.08.2002 issued by the respondent university for different category of post from SC,ST and OBC candidate wherein there was advertisement was made for the post of Junior Typist. Alongwith this the claimant has also filed the information obtained by her through RTI which clearly reveals that the claimant was working for the management from 31.05.1996 to 31.03.2001, initially in the education department of B.ed evening shift and then in the home science department of the university. Her service was brought to an abrupt end by the management.

The Ld. A/R for the management while pointing out to the evidence adduced by the management witness submitted that the claimant in this case has failed to prove that she was appointed in the university following the procedure prescribed under the university rule. She has also failed to discharge the burden that her engagement was for continuous 240 days in a calendar year. Hence, the claim advanced by her is not tenable and the relief sought for cannot be granted.

Whereas the claimant has stated that her appointment was regular, transferable and she was getting salary from the fund of university which gives her the status of permanent employee the respondent witness has denied the same in toto. The witness examined by the management is the registrar of the university. While tendering the evidence he has not filed any document. During cross examination he has admitted that the original document of the university relating to the service of the claimant workman has not been placed on record. At this juncture it is pertinent to mention that the management being the department in possession of all the documents could have produced documents relating to appointment of this claimant in time bound projects or scheme as they have stated in their WS. No explanation has been offered as to why the said documents were not placed on record. It is a settled Principle of law that the party in possession of best evidence is duty bound to produce the same which could have thrown light on the points of controversy irrespective of the fact that the burden lies on the adversary. Here is a case where the management as the employer is mightier than the employee workman and no explanation has been offered as to why the documents relating to claimant temporary or illegal employment where not placed on record. In such a situation this tribunal is left with no other option than to accept the contention of the claimant. The tribunal cannot loss sight of the fact which is based upon the oral and documentary evidence adduced by the claimant that she had worked for more than 6 years in the university during which the university was having direct supervision and control over her duties, paying salary to her, and transferring her from one post to another. Thus, it is held that the claimant had worked for the university for more than 1 year continuously and during one calendar year she had worked for more than 240 days. The Ld. A/R for the claimant strenuously argued that the management university is now taking a stand about the illegal appointment of the claimant or appointment in a time bound project only with the intention of depriving her of the legal rights. It is a decided principle of law that the employer and employee relationship is a question of fact and the burden lies on him who assorts the existence of the same. In the preceding paragraph it has already been held that the claimant has successfully proved her relationship as the employee with the employer H.N.B Garwal University. It is now to be seen if the termination of the workman was made following the procedure of law or illegal for non compliance of the same. Reference can be made to section 25F of the Id act 1947 which precisely speaks that no workmen not employed in any industry who has been in continuous service for not less than 1 year under an employer, shall be retrenched until the workmen has given one month notice in writing, or has been paid retrenchment compensation. It is the stand of the management that no such notice was required to be served since the workmen were not the employees of the management. Thereby the management has admitted non compliance of the provision of section 25F.. In this case the mandatory provision of section 25F,G,H were required to be complied before termination. The witness examined by the management has admitted in clear term that on 31/05/2002 when the service of this workmen was discontinued she was not served with termination notice nor paid notice pay, and retrenchment compensation. It is the stand of the management that no such notice was required to be served since the workman was not an employee of the management. Thereby the management witness admitted about non compliance of the provision 25-F,G and H of the ID Act. During cross examination the management witness has clearly admitted that no document to rebut the stand of the workman has been placed on record. It has also been admitted that the attendance register which has been annexed with the claim petition were maintained by the respective department head when it was state university and now the attendance has been taken centrally. The witness has also admitted that on 12th August 2000 a recommendation was sent by the head of the department where she was working address to the vice chancellor for her regular appointment. Not only that the management witness admitted that at no point of time any correspondence was made to the workman informing her that the appointment was under a project and not under the university. While admitting that for all the regular employees the registrar is the appointing authority the witness admitted that no documents are available to prove that 171 persons appointed against substantive post were terminated when the University came under the fold of central University Act. All this evidence taken together clearly proves that the service of the claimant was brought to an abrupt end on 31.05.2001 without following the mandatory provision of section 25F,G and H of the Id Act and amounts to unfair labour practice. This issue is accordingly in favour of the claimant.

Issue No. 2

Way back in the year 1980 the Hon'ble Apex Court of India in the case of Surendra Kumar Verma and Others vs. CGIT Delhi had observed that

> "Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days or a contractual worker is not entitled automatically to regularization came to hold that in appropriate cases regularization can be ordered.

Here is a case where workmen have prayed for a relief simpliciter for reinstatement to service with appropriate pay scale, other service benefits and back wages. They have specifically stated that since the date of termination they have not been gainfully employed. The management has not led any evidence to prove that the workmen have been gainfully employed during the pendency of this proceeding. The basic issue in the present proceeding was the status of the workmen which has been decided in their favour. The Ld. Counsel for the management by placing reliance in the case of **Secretary State of Karnatak and others vs. Uma Devi reported in (2006)4SCC1**submitted that the appointment of the contractual employees and regularization of their service is not an automatic process. He also drew the attention of the tribunal that these workmen are out of work since 2002. Hence, it will be inappropriate either to reinstate with back wages or regularize their service. But this argument advanced by the management is not accepted since in a later judgment, i.e. **Maharashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8SCC Page 556** the Hon'ble Apex Court have held in clear terms that the principle decided in the case of Umadevi is not applicable to Labour cases as the judgment in the case of Uma Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Besides the case of Maharashtra Road Transport referred supra the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

> "The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to Unfair Labour Practice being engaged for work on temporary basis for prolong period.

It is a rule of law that for no work done no remuneration is to be paid. Furthermore, there is no evidence on record to presume that there are vacancies for the nature of work discharged by these 4 workmen prior to their termination. Hence, keeping the principle in view it is felt proper that instead of passing an order for reinstatement of these workmen or regularization of their service justice would be best served if they would be compensated for the wrong done to them. Since they have not discharged any duty during the intervening period no order can also be passed for payment of back wages to them.

> "Hon'ble Apex Court in the case of **General Manager, Haryana Roadways vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under:-
>
> "8. There is no rule of thumb that in every case where the industrial Tribunal gives a finding that the termination of service was in violation of section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighted and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

In the case of **Hari Nandan Prasad vs. Food Corporation of India (2014) 7 SCC190**. It was observed by the Apex Court as under:-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of section 25-F although may be set aside but an award of reinstatement should not, however automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wager has not been found to be proper by the supreme Court an instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post of a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of nonpayment of under section 25-F of the Industrial dispute Act, even after reinstatement it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

Having regard to the judicial trends and facts & circumstances of the present case, this tribunal considers that compensation amount of Rs. 10,00,000/- will be just and reasonable. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant. The termination of the workmen by the management is held to be illegal. The management HNB Garwal University is directed to pay compensation of Rs. 10,00,000/- to the claimant/workman within 3months from the date when the award would become executable without interest. If the management will fail to comply the direction within 3 months the amount shall carry interest @9% per annum from the date it is payable till final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 18 जून, 2021

का.आ. 396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रजिस्ट्रार, एचएनबी गढ़वाल केंद्रीय विश्वविद्यालय, श्रीनगर, गढ़वाल (यूके) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री अर्जुन सिंह, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 98/2011) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.06.2021 को प्राप्त हुआ था।

[सं. एल-42011/51/2011-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th June, 2021

S.O. 396.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 98/2011) of the Central Government Industrial-Tribunal-cum Labour Court -2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, HNB Garhwal Central University, Srinagar, Garhwal (U.K) and Shri Arjun Singh, Worker which was received along with soft copy office award by the Central Government on 18.06.2021.

[No. L- 42011/51/2011 - IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 98/2011

Date of Passing Award- 4th March, 2021

Between:

Shri Arjun Singh,
S/o Shri Hyat Singh,
Village- Gajeli, PO- Lagyalu Bazar
Distt- Pauri
Garhwal (UK) ... Claimant

Versus

The Registrar,
HNB Garhwal Central University,
Srinagar, Garhwal (U.K.)
Garhwal (U.K.) ...Management

Appearances:-

Shri Sanjay Sharma (A/R) : For the claimant

Shri K.H. Gupta (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s. HNB Garhwal Central University, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/51/2011 (IR(DU) dated 10/10/2011 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of HNB Garhwal Central University, in terminating the services of workman Shri Arjun Singh S/o Shri Hyat Singh w.e.f. 11/10/2001, without complying with section 25-F,G,H is legal and justified? What relief the workman is entitled to?"

Both parties being put to notice and filed their claim statement and WS respectively.

The claimant has stated that he had been working as a chokidar 31.10.1996 with the management University during the period from 31.10.1996 to 11.10.2001. His appointment was with due approval of the vice chancellor in the department of environmental studies of the university. During this period she was discharging his duties with utmost sincerity. He also completed continuous work for more than 240 days in a calendar year. The vice chancellor of the respondent university being the sole employer had appointed him as a temporary employee. When he was discharging his duty diligently made several representations to the management for regularization of his service as he was discharging the work of permanent nature. The management without paying heed to the representation made appointment of persons junior to the claimant as permanent employees against the said post. Being aggrieved by that the management terminated the service of the claimant illegally in gross violation of law on 11.10.2001. At the time of termination neither the rule of last come first go was followed nor any notice of termination or notice pay in lieu of notice, or retrenchment compensation was paid. Finding no other way the claimant raised a dispute before the labour commissioner and the claim petition was filed before the labour court Dehradun. The said labour court by order dated 12.10.2010 came to hold that the tribunal has no jurisdiction to adjudicate the matter as the University is governed under the Central University Act. Thereafter the central government forwarded the terms of reference to this tribunal for adjudication. By filing the claim petition the claimant has prayed that the management be directed to reinstate the workman with full back wages continuity of service and other consequential benefits and further be directed to pay the arrear salary.

The management filed WS denying the stand taken by the claimant. It has been stated that the claimant was never appointed by the University Management and their never existed any employer employee relationship between them. It has been stated that the HNB Garhwal University was a state university upto 14th January 2009 and was upgraded as a central University under the Central Universities Act w.e.f 15.01.2009. During that up gradation there were 171 contractual/daily wager employee engaged by head of the department/project in-charge of the University who infact are not the appointing authorities nor they have any order from the vice

chancellor for making such appointment. During the state university status some of the departments might have engaged daily wager without the approval of the competent authority and such appointments are illegal. Those appointments might have been for a fixed term to provide back door entry to the university employment. When the university came to be governed under the central university Act none of those 171 contractual/daily rated employees were engaged against substantive vacancy. In the year 1988 the government had an issued an order sanctioning 418 post in the university, clearly specifying that no other engagement of daily wager would be made in the university. The 171 daily wager/contractual labours engaged by the project in-charge were never paid salary by the university and their salaries might have been released from the project fund or from the self financing budget head of the department. It has also been stated that out of those 171, 6 persons were removed after 4 to 6 years of their engagement. When the fact of the illegal engagement and back door entry in the service of the university was brought to the notice of the Hon'ble High court, the state government constituted a committee for inquiry into the matter. The committee found the appointment to be illegal and irregular and recommended for an action against the persons responsible. The present claimant is one among those 171 daily wager/contractual employee engaged without any permission or approval of the university and the person who had appointed him is not authorized to do so. With this the management has prayed for dismissal of the claim petition without giving any relief to the claimant.

On the rival pleading following issues were framed for adjudication.

1. Whether the action of the management of HNB Garhwal central University in terminating the services of Shri Arjun Singh we.f. 1.10.2001 without complying the provisions of section 25-F,G and H is legal and justified? If so its effect
2. What relief the workman is entitled to?

The claimant examined himself as WW1 and filed his statement inform of affidavit. Alongwith the affidavit he had filed several documents marked in a series of WW1/1 to WW1/8. These documents include the muster roll some certificate and letters issued to the management, representations made to the Chief Minister, the information obtained under RTI for showing absorption of persons Junior to the claimant in permanent post the copy of the claim filed before the Labour commissioner etc. another document has been filed which is in the nature of note sheet dated 10.10.98 in which the vice chancellor had approved the appointment of Arjun Singh on daily wage basis as a chowkidar. He was cross examined at length by the management. Similarly one Anil Kumar Jha the Registrar of the University testified as MW1 no document has been filed by the management.

At the outset of the argument the Ld. Counsel for the workman submitted that the documents filed by the claimant supported by the oral evidence clearly proves that he was appointed as a Chowkidar on 05.11.95 and vide order dated 31.10.96 his appointment was approved by the vice chancellor as a chowkidar in the department of the environmental studies. Again on 10.10.98 and 21.12.99 the vice chancellor had approved his employment as a class 4 employee for the sincerity and honesty exhibited. He had worked continuously for 240 days in a calendar year. His service was terminated illegally which amounts to unfair labour practice. It is the stand taken by the management during argument that no evidence has been placed on record regarding his employment by the competent authority and she was never in continuous service for more than 1 year. The university is guided by the UP state University Act 1973 which has a provision for appointment by the executive council when the claimant claims to have been appointed in the year 1996. His engagement might have been done through back door by a person not authorized to do so and thus the said appointment does not confer any right for regularization of the claimant. He also argued that when the university was a state university some illegal appointments were made and those appointees were removed from service when the university became a central university. On the rival argument and pleadings a decision is to be taken if the respondent university had terminated the service of the claimant illegally and without the complying the provision of law.

FINDINGS

ISSUE NO. 1

The claimant while testifying as WW1 has stated that he was appointed on 05.11.95 had worked upto 11.10.2001. At the time of cross examination he had stated that, the then registrar of the university had issued appointment letter to him. But subsequently the said original appointment letter was taken by the dealing assistant of the account section for preparation of the salary bill and never returned the same. While placing the attendance register on record he had stated that his salary was being drawn every month by the Central Accounts Department of the University. The photocopy of some pages of the attendance register has been placed on record. Not only that he had filed some pages of the salary register of the year 1996 which go to show that the claimant was getting salary from the University and his salary bill was signed and passed by the coordinator of environmental studies of the management university. He has also filed the photocopy of the attendance sheet for the month of August 2001 to July 2002 which contains the signature of the reporting officer i.e. Head of the department of environmental studies branch of the respondent University. He has also filed the copy of the advertisement dated 14.08.2002 issued by the respondent university for different category of post from SC,ST and OBC candidate wherein there was advertisement was made for the post of chowkidars.

The Ld. A/R for the management while pointing out to the evidence adduced by the management witness submitted that the claimant in this case has failed to prove that he was appointed in the university following the procedure prescribed under the university rule. He has also failed to discharge the burden that his engagement was for continuous 240 days in a calendar year. Hence, the claim advanced by his is not tenable and the relief sought for cannot be granted.

Whereas the claimant has stated that his appointment was regular, transferable and she was getting salary from the fund of university which gives his the status of permanent employee the respondent witness has denied the same in toto. The witness examined by the management is the registrar of the university. While tendering the evidence he has not filed any document. During cross examination he has admitted that the original document of the university relating to the service of the claimant/workman has not been placed on record. At this juncture it is pertinent to mention that the management being the department in possession of all the documents could have produced documents relating to appointment of this claimant in time bound projects or scheme as they have stated in their WS. No explanation has been offered as to why the said documents were not placed on record. It is a settled Principle of law that the party in possession of best evidence is duty bound to produce the same which could have thrown light on the points of controversy irrespective of the fact that the burden lies on the adversary. Here is a case where the management as the employer is mighter than the employee workman and no explanation has been offered as to why the documents relating to claimants temporary or illegal employment where not placed on record. In such a situation this tribunal is left with no other option than to accept the contention of the claimant. The tribunal cannot loss sight of the fact which is based upon the oral and documentary evidence adduced by the claimant that he had worked for more than 6 years in the university during which the university was having direct supervision and control over his duties, paying salary to him. Thus, it is held that the claimant had worked for the university for more than 1 year continuously and during one calendar year he had worked for more than 240 days. The Ld. A/R for the claimant strenuously argued that the management university is now taking a stand about the illegal appointment of the claimant or appointment in a time bound project only with the intention of depriving him of the legal rights. It is a decided principle of law that the employer and employee relationship is a question of fact and the burden lies on him who assorts the existence of the same. In the preceding paragraph it has already been held that the claimant has successfully proved his relationship as the employee with the employer H.N.B Garwal University. It is now to be seen if the termination of the workman was made following the procedure of law or illegal for non compliance of the same. Reference can be made to section 25F of the ID Act 1947 which precisely speaks that no workmen not employed in any industry who has been in continuous service for not less than 1 year under an employer, shall be retrenched until the workmen has given one month notice in writing, or has been paid retrenchment compensation. It is the stand of the management that no such notice was required to be served since the workman was not the employees of the management. Thereby the management has admitted non compliance of the provision of section 25F. In this case the mandatory provision of section 25F,G,H were required to be complied before termination. The witness examined by the management has admitted in clear term that on 31.05.2002 when the service of these workmen were discontinued they were not served with termination notice nor paid notice pay, and retrenchment compensation. It is the stand of the management that no such notice was required to be served since the workman was not an employee of the management. Thereby the management witness admitted non compliance of the provision 25-F,G and H of the ID Act. During cross examination the management witness has clearly admitted that no document to rebut the stand of the workman has been placed on record. It has also been admitted that the attendance register which has been annexed with the claim petition were maintained by the respective department head when it was state university and now the attendance has been taken centrally. The witness has also admitted that on 12th August 2000 a recommendation was sent by the head of the department where he was working address to the vice chancellor for his regular appointment. Not only that the management witness admitted that at no point of time any correspondence was made to the workman informing his that the appointment was under a project and not under the university. While admitting that for all the regular employees the registrar is the appointing authority the witness admitted that no documents are available to prove that 171 persons appointed against substantive post were terminated when the University came under the fold of Central University Act. All this evidence taken together clearly proves that the service of the claimant was brought to an abrupt end on 11.10.2001 without following the mandatory provision of section 25F,G and H of the Id Act and amounts to unfair labour practice. This issue is accordingly in favour of the claimant.

Issue No. 2

Way back in the year 1980 the Hon'ble Apex Court of India in the case of Surendra Kumar Verma and Others vs. CGIT Delhi had observed that

> "Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days or a contractual worker is not entitled automatically to regularization came to hold that in appropriate cases regularization can be ordered.

Here is a case where workmen have prayed for a relief simpliciter for reinstatement to service with appropriate pay scale, other service benefits and back wages. They have specifically stated that since the date of termination they have not been gainfully employed. The management has not led any evidence to prove that the workmen have been gainfully employed during the pendency of this proceeding. The basic issue in the present proceeding was the status of the workmen which has been decided in their favour. The Ld. Counsel for the management by placing reliance in the case of **Secretary State of Karnatak and others vs. Uma Devi reported in (2006) 4SCC1** submitted that the appointment of the contractual employees and regularization of their service is not an automatic process. He also drew the attention of the tribunal that these workmen are out of work since 2002. Hence, it will be inappropriate either to reinstate with back wages or regularize their service. But this argument advanced by the management is not accepted since in a later judgment, i.e. **Maharashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8SCC Page 556** the Hon'ble Apex Court have held in clear terms that the principle decided in the case of Umadevi is not applicable to Labour cases as the judgment in the case of Uma Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Besides the case of Maharashtra Road Transport referred supra the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

> "The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to Unfair Labour Practice being engaged for work on temporary basis for prolong period.

It is a rule of law that for no work done no remuneration is to be paid. Furthermore, there is no evidence on record to presume that there are vacancies for the nature of work discharged by these 4 workmen prior to their termination. Hence, keeping the principle in view it is felt proper that instead of passing an order for reinstatement of these workmen or regularization of their service justice would be best served if they would be compensated for the wrong done to them. Since they have not discharged any duty during the intervening period no order can also be passed for payment of back wages to them.

> "Hon'ble Apex Court in the case of **General Manager, Haryana Roadways vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under:—
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> "8. There is no rule of thumb that in every case where the industrial Tribunal gives a finding that the termination of service was in violation of section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighted and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

In the case of **Hari Nandan Prasad vs. Food Corporation of India (2014) 7 SCC190**. It was observed by the Apex Court as under:—

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of section 25-F although may be set aside but an award of reinstatement should not, however automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wager has not been found to be proper by the supreme Court an instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post of a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of nonpayment of under section 25-F of the Industrial dispute Act, even after reinstatement it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

Having regard to the judicial trends and facts & circumstances of the present case, this tribunal considers that compensation amount of Rs. 10,00,000/- will be just and reasonable. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant. The termination of the workmen by the management is held to be illegal. The management HNB Garwal University is directed to pay compensation of Rs. 10,00,000/- to the claimant/workman within 3months from the date when the award would become executable without interest. If the management will fail to comply the direction within 3 months the amount shall carry interest @9% per annum from the date it is payable till final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 18 जून, 2021

का.आ. 397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राष्ट्रीय ताप विद्युत निगम, दादरी, (यूपी) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सूरजपाल सिंह, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 111/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को 18.06.2021 को प्राप्त हुआ था।

[सं. एल-42012/34/2013 -आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th June, 2021

S.O. 397.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 111/2013) of the Central Government Industrial-Tribunal -cum Labour Court -2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The National Thermal Power Corporation, Dadri, (U.P.) and Shri Surajpal Singh ,Workers which was received by the Central Government on 18.06.2021.

[No. L-42012/34/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE COURT OF MS. PRANITA MOHANTY: PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 2, ROOM No. 208: ROUSE AVENUE COURTS COMPLEX: NEW DELHI

ID No. 111/2013

Surajpal Singh ...Workman

Versus

National Thermal Power Corporation,
Dadri, GB Nagar
(U.P.) ...Management

AWARD

This award shall decide a reference which was made to this Tribunal by the appropriate Government vide letter No.L-42012/34/2013/IR(DU) dated 22.07.2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> "Whether the action of the management of NTPC in terminating the services of Shri Surja Pal Singh, Pump Operator w.e.f. 18-4-1993 without complying of provisions of Section 25 F,G,H of Industrial Disputes Act is unjustified & illegal ? To what relief the workman is entitled to ?''

2. Both parties were put to notice and the claimant/workman Surajpal Singh filed his statement of claim with the averments that he being a graduate was appointed by the Management on 10/7/1989 as Pump Operator at NTPC Campus, Dadri. His appointment was made by the Interview Board of NTPC after due compliance of eligibility criteria and verification of his documents. After his initial appointment on 10/7/1989 he performed his duties at Old Bank Pump of NTPC, Dadri, Vidhyut Nagar, District Ghaziabad (UP) till 3/9/90 and thereafter, he worked at Kendriya Vidyalaya and worked with the Management under the control & supervision of its Officials namely Shri Maan Singh Verma, Supervisor and Shri R.K. Aggarwal, Engineer and Shri S.C.Chawla, Manager (Township) etc. He continuously worked there for more than 240 days in calendar year. His last drawn salary was Rs.3500/- per month. Since his services were not regularized by the Management, he filed a writ petition bearing No.3919 of 1993 before Hon'ble High Court of Allahabad inter alia praying for the relief of regularization. The services of the workman/claimant were illegally and unjustifiably termination w.e.f. 18/4/1993 by senior officers of the Management namely Shri R.K. Aggarwal, Senior Engineer and Shri Man Singh Verma, Supervisor verbally. The claimant continuously worked with the Management from the date of his appointment till his services were illegally terminated on 18/4/1993, in violations of the provision of Section 25-F, G and H of the Act because the Management neither displayed the seniority list of the workers nor complied with the provisions of "First come Last go". Neither any memo nor charge sheet nor any notice nor notice compensation was given to him prior to termination of his services. The job against which the workman was working is of a regular and permanent nature. It is pleaded that the order of termination was given illegally and non employment was forced on him. The management has engaged fresh hands in his place as well as on other post Pump Operator . The claimant/workman approached the Conciliation Officer at Dehradun but to no avail due to adamant attitude of the Management. It is also pleaded that the workman is unemployed from the date of illegal termination of his services . He has prayed for reinstatement into service with full back wages and continuity of services & seniority etc. as well as full consequential benefits.

3. The Management resisted the claim of the workman by filing written statement and took preliminary objections inter-alia that there is no relationship of employer & employee between the parties as the claimant was never employed by the Management of NTPC rather he was employed w.e.f. 1/1/1993 as Operator cum watchman by the contractor M/s Alankar Nursery & Fams in whose favour contract "Operation & Maintenance of Water Supply & Sewerage Disposal Pumps" was awarded by NTPC. The workman was paid salary by the contractor. Since the workman was never appointed by NTPC, there was no question of NTPC, giving him any appointment letter, ESI, EPF benefit etc. It has been denied that the claimant was working continuously or he completed 240 days of work in every year. Prayer has been made for rejection of the claim petition.

4. The workman/claimant filed rejoinder, reiterating his own case as set up in the statement of claim and denied the allegations made out by the Management.

5. On the pleadings of the parties, following issues were framed 7/8/2014 :—

(1) Whether the action of the Management of NTPC, Dadri, in termination the services of Shri Suraj Pal Singh, Pump Operator w.e.f. 18/4/1993 without complying of provisions of Section 25 F, G, & H of Industrial Disputes Act, 1947 is unjustified and illegal ? If so, its effect ?
(2) Whether relationship of employer and employee exsits between respondent and workman ? If so, its effect ?
(3) To what relief the workman is entitled to ?

6. In order to prove his case, the claimant examined himself as WW1. He filed his affidavit Ex.WW1/A and placed reliance on the documents Ex.WW1/1 to Ex.WW1/19. On the other hand, the Management examined one Shri Omender Singh as MW1 who claimed to be the Site Manager of M/s Alankar Nursery & Farms besides examining Shri Nikesh Kumar, Senior Manager (HR) as MW2, who filed his affidavit Ex.MW2/A and relied on documents Ex.MW2/1, Ex.MW1/1 & Ex.MW1/2.

7. I have heard Shri S.P. Saxena, A/R for the claimant and Shri Rajesh Mahindru, A/R for the Management and have gone through the records carefully. My findings on the above issues are as follows.

Issue No.2 :—

8. Firstly I propose to answer issue No.2 which goes to the root of controversy between the parties.

9. Ld. AR appearing on behalf of the Management strongly contended that there is no relationship of employer and employee between the Management & claimant, nor the claimant has completed 240 days of service in a calendar year, preceding to his alleged termination. As such, provisions of Section 25-F of the Act are not applicable to the case in hand. It was also contended that onus is also upon the claimant to prove that he was in the employment of the Management and has completed more than 240 days in a calendar year.

10. Per contra, learned A/R appearing on behalf of the Claimant submitted that the workman was appointed by the Management of NTPC on 10/7/1989 as Pump Operator at NTPC Campus, Dadri. His appointment was made by the Interview Board of NTPC after due compliance of eligibility criteria and verification of his documents. The workman worked under the Management for more than three years till 18/4/1993 when his services were illegally terminated. As such there exists relationship of employee & employer between the parties.

11. There is no dispute about preposition of law that onus to prove that claimant was in the employment of Management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the Management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a Calendar year. In this regard, reference may be made to *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.*

12. This Tribunal has to consider the oral as well as documentary evidence adduced on record so as to decide the question of relationship of employer and employee between the Management and the claimant herein. In this respect, it is appropriate to refer to the affidavit ExWW1/A of the claimant. It is clear from the perusal of the affidavit Ex.WW1/A that it is in consonance with the pleadings i.e. statement of claim filed by the claimant. He has filed on record a number of documents viz. copies of Log Book register as Mark-A to J, performance certificates and identity card issued by the Principal of Kendriya Vidyalaya NTPC as Ex.WW1/2 and Ex.WW1/5 respectively; copy of the identity card; request letter dated 6/4/92 issued by NTPC to Security Staff for permission to the claimant./workman to carry Jerry Cane of Sodium H/Chloride from T/S office to Pump House as Ex.WW1/3; copy of leave application (Ex.WW1/4) which the workman had addressed to the Supervisor, Water Supply & Maintenance, NTPC for grant of leave from 20/7/92 to 28/7/92 for (Kaanwar) visiting to Haridwar etc. etc. In cross examination, he explained that he was recruited by Shri G.M. (General Manager) Narula whom he had met through his father in law and his interview as taken on 3/7/1989 and he was ordered to join duty on 10/7/89. He admitted that vacancies were not published against which he was recruited. Neither any interview letter nor any appointment letter was issued to him. He volunteered that during his service, the Management had obtained his signatures on log book. He admitted having no written proof that he was paid salary by NTPC. He also admitted having filed a writ petition bearing No.3919 of 1993 before Allahabad High Court copy of which is Ex.WW1/M-1. He denied the suggestion that he was working as contractual worker w.e.f. 10/7/89 to 13/8/1991 with M/s Rana Electrical Works and that w.e.f. 14/8/1991 to 31/12/1992 he was working with contractor/s M/s BCC Developers and Promoters Pvt. Ltd. as watchman cum Operator. He has been cross examined at length but nothing incriminatory came out to shake his testimony.

13. MW1 Omender Singh claiming to be Site Incharge of M/s Alankar Nursery & farms testified that his uncle Dharmender Singh was the Proprietor of aforesaid firm which had entered into contract with NTPC **w.e.f. 1/1/1993 and** that the workman/claimant had worked as a contract labour w.e.f. 1/1/93 for about three to four months. According to him, the workman Suraj Pal Singh was removed from service as his work was not

satisfactory and he was paid all dues. He admitted that documents Ex.MW1/1 and Ex.MW1/2 are not original but photocopies.

14. Affidavit Ex.MW2/A filed by MW2 Nikesh Kumar, Senior Manager (HR) of NTPC is in consonance with the contents of the written statement. This witness had also filed additional affidavit Ex.MW2/B. In cross examination he clarified that NTPC issues identity cards to its permanent employees only. Showing his ignorance that the workman had worked for NTPC from 10/7/89 till his termination, he volunteered that he might have been engaged through contractor working for NTPC. He explained that unless records are verified by him, he could not say if in the year 1992 NTPC had issued Identity Cards to 27 persons and a list in this regard was prepared. He also could not say if persons junior to the workman/claimant as per list were made regular, ignoring the seniority of the workman.

15. It is a matter of record that an application under Section 11 read with rule 15 of the Act was filed on behalf of the claimant,. seeking production of documents by the Management of NTPC, vis-à-vis list of pump operations as well as seniority list of pump operator of NTPC Dadri Zone who worked during the year 1989 till 1993, log book register for the period intervening 10/7/89 to 29/5/1992 in respect of duties performed at Old Bank Water Supply Pump of the Management etc. but the same were not produced simply on the plea that summoned documents were not in possession of the Management. There is categorical version of the workman /claimant that after his initial appointment/recruitment on 10/7/1989, he had performed his duties at Kendriya Vidhyalaya of NTPC, Dadri, Vidhyut Nagar, District Ghaziabad (UP) till 3/9/90 and thereafter, he worked at Old bank pump and worked with the Management under the control & supervision of its Officials namely Shri Maan Singh Verma, Supervisor, Shri R.K.Aggarwal, Engineer and Shri S.C.Chawla, Manager (Township) etc. His version finds support from the documents Ex.WW1/1 (Principal), Ex.WW1/2 and Ex.WW1/5 respectively which are performance certificates and identity card issued by the Principal of Kendriya Vidyalya NTPC. Moreover there appears signatures of the workman Suraj Pal Singh pertaining to the entries made in the log book register, copies of which have been filed on record as Mark-A to J. Since the Management failed to produce the record pertaining to Log Book entries, this Tribunal has to draw adverse inference against it and to presume that documents Mark-A to J are genuine one. The Management has not produced originals of documents Ex.MW1/1 and Ex.MW1/2 to show that the workman Suraj Pal Singh was engaged by M/s Alankar Nursery & Farms w.e.f.1/1/1993. On the other hand, documents Ex.WW1/1, Ex.WW1/2, Ex.WW1/5 as well as documents Mark A to J clearly show that the claimant performed duty of Pump Operator under the control and supervision of the Management continuously from 10/7/1989 to 18/4/1993 and as such he worked for more than 240 days in a calendar year preceding the date of his termination.. Even if it is presumed that the claimant was engaged by the Management on casual or daily rated or temporary basis, in that eventuality also there existed relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :—

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Consequently, it is held that there existed relationship of employee –employer between the workman/claimant and the Management. This issue is decided accordingly in favour of the workman.

Issue No.1 and 3:—

16. Both these issues being inter-connected are taken up together. It is the case of the claimant/workman that although he continuously worked under the Management from 10/7/1989, his services were terminated w.e.f. 18/4/1993 without issuing any notice or without any notice pay/compensation. Entire case of the Management is based on the plea that the claimant was not its employee. This Tribunal has already held that there existed relationship of employer-employee between the parties. The Management has not adduced any evidence to show that any notice or compensation in lieu of notice period was given to the claimant by the Management prior to termination of his services w.e.f.18/4/1993. As such termination of the claimant/workman by the Management was in violation of provisions of Section 25-F of the Act.

17. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :—

"25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and
(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

18. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management illegal and void under the law.

19. Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him, such action of the Management in terminating the services of the workman w.e.f. 18/4/1993 is held to be illegal and void.

20. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. Testimony of the claimant that he continuously worked with the Management from 10/7/1989 to 18/4/1993, has gone unrebutted. There is no show cause notice or charge-sheet issued to the claimant/workman by the Management. Moreover, the job of the workman as Pump Operator is considered to be of perennial and regular nature. The claimant has pleaded and testified that he is totally unemployed since his termination on 18/4/1993. No evidence to the contrary has been adduced by the Management. Even if it is assumed that the workman/claimant is doing intermittent job, that can not be considered to be regular gainful employment of the claimant/workman herein. As per own version of the claimant, his services were illegally terminated w.e.f. 18/4/1993. Prior to that he had filed a Civil Misc. Writ Petition No.3919 of 1993 (Ex.WW1/M-1) before Hon'ble High Court of Allahabad, seeking regularization of his services and the said writ was dismissed on 27/7/2005 as stated in para 8 of the Statement of Claim. He had given representation dated 27/8/2012 to the ALC/Conciliation Officer and conciliatory efforts ended in failure on 29/1/2013, resulting into the present reference. A considerable period has gone between the date of his termination of service and the present reference, which is an important aspect. There is nothing on record to show that the workman was holding permanent post or that he was a permanent/regular employee of NTPC drawing salary in proper pay-scale . As per his own case, his last drawn wages were Rs.3500/- per month.

21. Hon'ble Apex Court in the case of **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :—

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for***

the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."*

22. In the case of **Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190, it was** observed by the Apex Court as under :-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wager has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post of a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

23. Having regard to the judicial trends and facts & circumstances of the present case, this Tribunal considers that compensation amount of Rs.3 lakhs (Rupees Three Lakhs) will be just and reasonable. Therefore, compensation amount of Rs.Three Lakhs is hereby awarded in favour of the claimant/workman which shall be paid by the Management within three months from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization. Award is passed accordingly.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 24 जून, 2021

का.आ. 398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड इंडिया इंशोरेंस कं. लि., दिल्ली के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकार श्री जितेन्द्र सिंह के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय सं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 35/2010) को प्रकाशित करती है ।

[सं. एल-17012/25/2006-आई आर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 24th June, 2021

S.O. 398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2010) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court No 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of United India Insurance Co. Ltd., Delhi and their workman Shri Jitendra Singh, New Delhi.

[No. L-17012/25/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 35/2010

Date of Passing Award- 10th March, 2021

Between:

Shri Jitendra Singh,
S/o Shri Jehance,
House No. G-1792-93,
Jahangirpur, New Delhi-110033. … Claimant

Versus

The Regional Manager,
United India Insurance Co. Ltd.,
Regional Office-II, IInd, Floor,
Core-I, SCOPE Tower, Laxmi Nagar, Delhi.

…Management

Appearances:-

Shri R.K. Jain (A/R) : For the claimant.

Shri Arvind Bhatt, (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s United India Insurance Co. Ltd., and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-17012/25/2006 (IR(M) dated 12/10/2010 to this tribunal for adjudication to the following effect.

> "Whether the demand of Shri Jitender Singh from the management of United India Insurance Co. Ltd. for his reinstatement w.e.f 01/05/2006 with minimum full back wages w.e.f 01/07/2003 and payment of wages for the month of April, 2006 with interest is legal and justified? What relief the workman concerned is entitled to and from which date?"

In the claim statement the claimant has stated that on 01.07.2003 he was appointed as a Safai Karamchari(sweeper) in the Divisional Office of the management United India Insurance at Azadpur Delhi by the then Divisional Manager Shri Mohan Singh on a daily wage of Rs. 50/-. He was assured that soon his service will be regularized soon and the prescribed pay scale alongwith other service benefits at par with the regular sweepers will be given to him. The claimant/workman hoping to be regularized continued to perform his duty to the satisfaction of the authorities on the said daily wage basis. He was often requesting the authorities for regularization of his service which was deferred on some pretext or other. Two and half years after his engagement the management intentionally omitted to give him appointment letter or any document with regard to regularization of service. He was thereby deprived of his legal rights to be covered under the provision of ESI and EPF Act. Earned leave, leave salary, and casual leave etc were also not granted to him. All the demand made by the claimant in this regard remained unheeded. After completing continuous service for more than 240 days in a calendar year, when the claimant was not regularized, he, having no other efficacious remedy served a legal notice on the management for enforcement of the right. On receipt of the said notice the then Senior Divisional Manager became annoyed and terminated his service illegally w.e.f 01st May 2006. At the time of termination he was not paid the salary for the month of April 2006. Not only that before termination no notice of termination, pay in lieu of notice or retrenchment compensation were paid. The Principle of Last Come First Go was also not followed by the management. After termination from service the workman remained unemployed and again served a demand notice on the management through his advocate which was duly acknowledged by the management on 16.05.2006. Since the management did not take any step towards redressal of the grievance of the workman he filed a claim petition before the labour commissioner alleging unjust improper and illegal termination amounting to unfair labour practice by the management. Before the commissioner conciliation proceeding was initiated in which the management participated but no solution could be arrived at for the adamant nature of the respondent. The conciliation since failed the Appropriate Government referred the matter to this tribunal for adjudication.

On receipt of notice the management United India Insurance Company Limited appeared and filed WS denying any relationship with the claimant as the employer and employee. It has also been stated that the claimant is not a workman under the definition given u/s 2(s) of the Id Act. It has also been denied that the workman was ever appointed by the Divisional Manager and thereby denied the alleged termination by the management. It has also been stated that the respondent is a government company having its own Rules and Procedures for appointment and the Divisional Manager is not authorized to make any such appointment. Furthermore, in the WS the management has specifically denied about the engagement of the claimant on daily wage basis or working in the premises of the management at any point of time. While denying the claim of the workman that he has worked in the premises of the respondent continuously for 240 days in a calendar year the management has stated that all these pleadings are false and no legal demand notice was ever served on the management. He was neither paid salary by the management nor any assurance was given. The management has thereby pleaded that claim of the workman is baseless and the demand for regularization of service, payment of back wages and other benefits are not entertainable under law.

On the rival pleadings the following issues were framed for consideration.

ISSUES

1. Whether there exists relationship of employer and employee between the parties.
2. As in terms of reference.

During the pendency of the proceeding the claimant had filed an application u/s 11(3) of the Id Act for a direction to the management for production of documents. Though opportunity was given to the management to file objection, no step was taken and the petition was allowed directing the management to produce the documents giving liberty to the workman for production of secondary evidence in case the management would fail to produce the documents. As seen from the record the management did not produce the documents and the claimant filed the photocopies of the document which have been exhibited.

The claimant examined himself as WW1and proved the photocopies of the document marked in the series of WW1/1 to WW1/6. On behalf of the management one R.K Siroba Deputy Manager was examined as MW1. No document has been filed by the management.

FINDINGS

ISSUE No. 1

It is a decided Principle of Law that the person asserting about the employer and employee relationship carries the burden of proving the same. In this case the claimant has all along pleaded that he was working as a daily wage sweeper for the management w.e.f 01.07.2003 and the then Senior Divisional Manager Mohan Singh had appointed him. No appointment letter has been filed by the claimant who has explained that the Divisional Manager had assured him of regularizing his service. Thereby the claimant in his sworn testimony has stated that the appointment letter was never issued to him. To support his stand the claimant had called for certain documents from the possession of the management. But no document was produced by the later. Being permitted by the tribunal for filing secondary evidence the claimant has filed a document marked as WW1/3 consisting of several vouchers showing payment to the claimant during the period August 2003 to March 2006. He has also filed certain documents which are the photocopies of a register in proof of the fact that he was working as a office attendant and discharging the work of getting the photocopies done and carrying out other documents. These payment vouchers and receipt created during a period August 2003 to March 2006 have been filed by the claimant to prove that as a sub staff of the management he was discharging the duties assigned to him. On the basis of this oral evidence supported by documents the claimant has asserted to prove that his appointment was as a daily wage sweeper w.e.f 01.07.2003 and the management was his employer from whom he was getting his remuneration. Except denying the stand of the claimant the management has not adduced any evidence to rebut the document filed by the claimant. The witness MW1 examined on behalf of the management has simply denied the employer and employee relationship as claimed by the workman. During cross examination he has admitted that he has no knowledge if Mohan Singh was the Senior Divisional Manager in the year 2003 but the said Senior Divisional Manager has the power to make arrangements for discharge of the day to day function in the office. The witness had admitted that the writ petition was filed by the claimant before the Hon'ble High Court. But denied to the suggestion that in the said writ petition the management had admitted about the status of the claimant as a Safai karamchari of the management. On behalf of the claimant a photocopy of the order passed by the Hon'ble High Court in WP© No. 6559 of 2007 has been filed. In the said order the Hon'ble High Court in Para 11 have observed that the respondent no.1 i.e. United India Insurance Company in Para II of their reply on merit filed in the writ petition have admitted that the petitioner Jitender Singh was engaged for sweeping, moping etc for approximately 1-2 hours daily. This admission of the respondent in the writ petition as has been observed by the Hon'ble Judge Coupled with the payment vouchers filed by the

claimant lead to a conclusion that the claimant was working as a sweeper on daily wage basis for the management from 01.07.2003 to 30.04.2006.

Now the question is if this much oral and documentary evidence is sufficient to prove the employer and employee relationship between the management and the workman.

In the case of **Steel Authority of India vs. National Union Waterfront Workers reported in (2001)7SCC Page1** the Hon'ble Apex Court in order to resolve the dispute relating to employer and employee relationship have prescribed for the effective control test. Not only that way back in the year 1958 the Hon'ble Apex Court in the case of **Chintaman Rao vs. State of MP reported in AIR 1958Page 388** had ruled that the concept of employment involves 3 ingredients (1)employer (11)employee (iii)contract of employment. The employer is one who employes or engages the service of other person. The employee is one who works for and another for hire. The employment is the contract of service between the employer and the employees, where under the employee agrees to serve the employer subject to his control and supervision. In the case of workmen of **Food Corporation of India vs. Food Corporation of India reported in AIR 1985(SC)670** the Hon'ble Apex Court further pronounce that the contract of employment always discloses a relationship of command and obedience between them. Where a contractor employees a workmen to do the work which he contracted with a third person to accomplish, the workmen of the contractor would not become more than the workmen of the third person.

On behalf of the workmen the Ld. A/R took this tribunal through the case of **Balwant Rai Saluja vs. Air India Limited** decided by the Hon'ble Apex Court to submit that the doctrine of Piercing the corporate veil comes to be used in a scenario wherein it is evident that the company or contractor was a mere camouflage or sham, deliberately created by the persons exercising control over the said company or the contractor for the purpose of avoiding the liability. Intent of piercing the veil must be to remedy the wrong done by the person controlling the company.

In this proceeding the workman has all along maintained that he was working under the supervision and control of the management and getting remuneration from it. No rebuttal evidence by the management except the denial has been placed on record. The evidence so adduced thus leads to a conclusion that the claimant was working under the supervision and control of the management and getting remuneration for the work done and there existed employer and employee relationship between them. This issue is accordingly answered in favour of the claimant.

ISSUE NO. 2

The reference has been received to adjudicate if the claimant is entitled to reinstatement w.e.f 01.05.2006 with full back wages and if his service is to be regularized w.e.f 01.07.2003. The claimant has pleaded that the management being aggrieved by his demand for regularization illegally terminated his service w.e.f 01st May 2006 and the remuneration for the month of April was not paid. It has further been pleaded that at the time of termination the provision of section 25-F,G and H were not followed which amounts to unfair labour practice. The claimant in his oral evidence has stated that no notice for termination, notice pay, or retrenchment compensation was paid at the time of termination. Under schedule V of the Id Act engagement of the workman as Badli, casual or temporary and to continue him for years with the object of depriving him of the status and privilege of permanent workman has been described as unfair labour practice. In this proceeding the claimant has categorically stated that since July 2003 and till the end of April 2006 i.e almost for 3 years he was working uninterruptedly for the management and thereby worked for 240 days and more in a calendar year. Such continuous works creates a right in his favour to be absorbed as a permanent employee. The Ld. A/R for the management strenuously argued that he management is a government company having its own rule and regulation for recruitment. No back door entry without due process is permissible. He also submitted that the present claimant was engaged for an intermittent work without due process and his candidature cannot be considered for his engagement against a permanent post. To support his stand he placed reliance in the case of **Secretary State of Karnatak and others vs. Uma Devi and others reported in (2006)4 SCC Page 1.** On behalf of the claimant objection was raised regarding the applicability of the judgment of Uma Devi referred Supra to Industrial Dispute relating to unfair labour practice.

In the case of Uma Devi the Hon'ble Supreme Court have held that the persons who were appointed on temporary and casual basis without following proper procedure cannot claim absorption or regularization since the same is opposed to the policy of public employment. But this is not a case of claiming automatic regularization or absorption. The claimant of this proceeding has ventilated his grievance since he was deprived of his legal rights by his disengagement.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556** wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma

Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Now it is to be seen if the claimant of this proceeding was subjected to unfair labour practice or not. **"Unfair Labour Practice"** as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID Act. Under the said 5th Schedule to employ workmen as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts to unfair Labour Practice. In this case the document filed by the workman and marked as WW1/3 clearly indicates that this claimant was working in the office of the respondent since the year 2003 continuously. The management in utter disregard of law, deprived him from being regularized against a permanent post.

Besides the case of Maharashtra Road Transport referred supra the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

> "The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workman has been subjected to Unfair Labour Practice being engaged for work on temporary basis for prolonged period. Not only that the Hon'ble High Court of **Jammu and Kashmir in the case of J and K Bank Limited vs. Central Government Industrial Tribunal and Others reported in 2018 LAB I.C. 2970** have held:

> "Unfair Labour Practice-what amounts to-workmen continued in temporary/contractual capacity for years together despite availability of vacant posts, aimed at depriving them of status and privileges of permanent workmen- clearly amounts to unfair labour practice- directions issued by Tribunal to appellant Bank to frame scheme for regularization of respondent workmen within period of 3 months and that respondents workmen would be deemed to have been regularized in case of failure of appellant- Bank to frame scheme, held, justified."

In this case the oral and documentary evidence since proves the continuous service of the workmen for the management on temporary basis since the year 2003 the decision of the management in terminating his service is held to be illegal and unjustified. The argument of the Ld. Counsel for the respondent that the claimant not being an employee the question of termination doesn't arise is not accepted in absence of any evidence adduced by the management.

The witness examined on behalf of the management as MW1 in a casual manner has either denied the claim of the claimant or expressed ignorance of the facts pleaded by the claimant. His evidence is of no assistance for adjudication of this dispute.

Though under the scope of the reference this tribunal is to adjuciate on eligibility of the claimant for reinstatement anad back wages, from the evidence on record, it has been proved that the service of the claimant was illegally terminated without following the procedure laid u/s 25-F,G,H of the Id Act and the same amounts to unfair labour practice. In the case of **Hari Nandan Prasad and Another vs. Employer I/R to Management FCI reported in (2014)7 SCC 190** the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the awards and the settlement. Thus, the act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in settling the dispute between the employer and the workman the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

Here is a case where as indicated above the workman has been victimized on account of unfair labour practice by the management. The management has not adduced any evidence to the effect that the post in which the claimant was working has been filled up in the meantime. Keeping the situation in view it is felt proper to issue a direction to the management to reinstate the claimant as a Safai Karamchari with the pay scale the permanent employee of that cadre are getting. The pay scale would be admissible to him from the date of his

reinstatement subject to him fulfilling the age criteria for the post. He is also held entitled to compensation for the unfair labour practice meted out to him. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant. It is held that the action of the management in refusing to regularize the service of the claimant and terminating him with effect from 1st May 2006 is illegal. The management is directed to compensate the claimant for the loss and agony suffered during the intervening period by paying Rs. 200,000/- within 3 months from the date of publication of the award without interest. If the amount would not be paid as ordered within the time stipulated the amount shall carry interest @ 9% per annum from the date of the publication of the award till final payment is made. The respondent management is further directed to reinstate the claimant within 2 months from the date of the publication of the award in the post of Safai Karamchari and extend him the pay scale and other service benefits as is admissible to the permanent employees of the management in that cadre. Subject to the condition that the claimant has not attained the age of superannuation in the meantime. If the claimant is found to have attained the age of superannuation, the management in lieu of the direction of reinstatement shall pay additional amount of Rs. 300,000/- over and above the Rs. 200,000/- within 3 months from the date of publication of award without interest. If the amount would not be paid as directed, it shall carry interest @9% per annum from the date of publication of the award till final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 24 जून, 2021

का.आ. 399.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. आर. एस. सिक्योरिटी, अहमदाबाद, कन्ट्रेक्टर आफ मै. ओ.एन.जी.सी. लि., महसाना (गुजरात) के प्रबंधतंत्र, संबद्ध नियोजकों और सैकेन्डरी फोर्स एस.जी. इंप्लाईज वैलफेयर एसोसिएशन महसाना (गुजरात) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के (गुजरात) के पंचाट (161/2019) को प्रकाशित करती है।

[सं. एल-30011/42/2019-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 24th June, 2021

S.O. 399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 161/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* AHMEDABAD (GUJARAT) as shown in the Annexure, in the industrial dispute between the management of M/s. R.S. Security, Ahmedabad Contractor of M/s ONGC Ltd.; Mehsana (Gujarat) and Secondary Force S.G. Employee Welfare Association, Mehsana (Gujarat).

[No. L-30011/42/2019-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer

Reference (CGITA) No. - 161/2019

(1) The Executive Director,
M/s. ONGC Limited, KDM Bhavan, Palavasana,
Mehsana (Gujarat) – 384003

(2) The Genereal Manager (Security),
M/s. ONGC Limited, KDM Bhavan, Palavasana,
Mehsana (Gujarat) – 384003

(3) M/s. R.S. Security,
Branch Office – B-B1, Sarthi Bunglow,
Near Bharat Sanchar Nigam Limited Office,
Bopal, Ahmedabad (Gujarat) – 384003 ...First Parties

V/s

The President,
Secondary Force S.G. Employee Welfare Association,
F-3, Becharaji Road, Shivam Complex, Palavasana,
Mehsana (Gujarat) – 384003 ...Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-30011/42/2019-IR (M) dated 05.12.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the termination of the services of Shri Harshad V. Chaudhary, Security Guard w.e.f. 08.07.2019 by M/s R.S. Security, Ahmedabad (Contractor) under ONGC Ltd., Mehsana as raised by Secondary Force S.G. Employees Welfare Association, Mehsana vide letter dated 24.07.2019 is proper, legal and justified? If not, to what relief Shri Harshad V. Chaudhary, is entitled to? What other directions, if any, are necessary in the matter?"

The same reference was received in this Tribunal on 16th December 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than a year has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

1. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

2. It is therefore just & proper to pass an award considering "no dispute" between the parties.

3. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 24 जून, 2021

का.आ. 400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेघाहतुबुरू आयरन ओर माइन्स के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ सं. 277/2000) को प्रकाशित करती है।

[सं. एल-26012/16/2000-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 24th June, 2021

S.O. 400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 277/2000) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1,* Dhanbad as shown in the Annexure, in the industrial dispute between the management of Meghahatuburu Iron Ore Mines and their workmen.

[No. L-26012/16/2000-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 277/2000

Employer in relation to the management of Meghahatuburu Iron Ore Mines.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand. Industry:- Iron

Dated 26.02.2021

AWARD

By Order No.L-26012/16/2000-IR(M) dated 11/09/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Meghahatuburu Iron Ore Project, SAIL, in denying overtime wages to their workmen is justified? If not, to what relief the concerned workmen are entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter again four regd. notices were issued to the parties but even then no one appeared on behalf of the workman/union. Now the Case is pending since 03/10/2000 and workman/union is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 24 जून, 2021

का.आ. 401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयरपोर्ट ओथोरटी आफ इंडिया (एन.ए.डी.), नई दिल्ली के प्रबंधतत्र, संबद्ध नियोजको और दिल्ली लेबर यूनियन के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 128/2003) को प्रकाशित करती है।

[सं. एल-11011/15/2003-आईआर (एम]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 24th June, 2021

S.O. 401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 128/2003) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2,* New Delhi as shown in the Annexure, in the industrial dispute between the management of Airport Authority of India (NAD), New Delhi and Delhi labour Union.

[No. L-11011/15/2003- IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 128/2003

Date of Passing Award- 1st March, 2021

Between:

The General Secretary,
Delhi Labour Union, Aggarwal Bhawan,
G.T Karnal Road, Tis Hazari,
Delhi-110054. ... Claimant

Versus

The General Manager
Airport Authority of India (NAD)
Radion Contructin and Dev. Unit, Safdarjung Airport
New Delhi ...Management

Appearances:-

Shri Rajiv Aggarwal (A/R) : For the claimant.

Shri Sunil Dutt (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s Airport Authority of India, (NAD), and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-11011/15/2003 (IR(M) dated 11/09/2003 to this tribunal for adjudication to the following effect.

> "Whether the demand of the Delhi Labour Union in regard to absorption/regularization of the services of Shri Netrapal Singh, Sanjay Kumar, Ashok Kumar, and Sanjay Singh, all contract labourers engaged as Sweepers in the establishment of Airport Authority of India, Safdarjang Airport, New Delhi and discontinued their services from 04.06.2002 by Airport Authority of India is just, fair and legal? If Yes, to what relief these workmen are entitled and from which date?"

The claimant as stated in the claim petition were working as sweepers at Radio construction and development unit of Airport Authority of India. Whereas Netrapal and Sanjeev Kumar started working in the

year 1997 Ashok Kumar and Sanjay Singh started working in the year 1998 and 1999 respectively and discharging a permanent nature of work i.e. Sweeping, cleaning, and maintaining the premises of the management which is ordinarily done through regular workmen of the principal employer. They were discharging their duties to the maximum satisfaction of the employer management who had direct control and supervision over the act done by them. The Government of India in the year 1970 had passed the Contract Labour(Regulation and Abolition Act) by virtue of which engagement of Contract labour against permanent nature of work was brought to an end and to that effect a notification was published in the gazette on 09.12.1976 the management ignoring the said notification and by violating the provision of the Act employed large no. of workers including the workmen of this proceeding as contract labour for the work of cleaning and sweeping in its establishment. The work discharged by the workmen was of perennial nature and carried out throughout the year. But the management was paying Rs. 111/- per day as wage to them. Though for name sake they were employees of the contractor, infact the management Airport Authority was having all direct and indirect control and supervision of their work. The workmen were often demanding regularization of their service with the management Airport Authority of India which remained unheeded. Thus, they sought relief before the Hon'ble High Court Delhi by filing CWP No. 7494 of 1999. But the Hon'ble High Court considering the judgment of the Hon'ble Supreme Court, in the case of Steel Authority of India limited vs. National waterfront workers union disposed of the writ petition giving liberty to the workmen to approach the appropriate forum in accordance with the observation and the direction of the Supreme Court in the case of Steel Authority of India and others. Thus, the present claim was advanced before the conciliation officer where the management appeared but no terms of compromise could be arrived at. On the contrary during the pendency of the dispute the management in a move of vindication terminated the services of the workmen w.e.f 04.06.2002 and being aggrieved an application u/s 33A of the Id Act was filed before the conciliation officer. The conciliation since failed the appropriate government referred the matter for adjudication on the legality of the action taken by the management in discontinuing the services of the workmen.

It has further been stated by the claimant that their engagement as contract labours was illegal and the presence of a contractor was nothing but an attempt by the management to deprive them of their lawful rights. The other stand taken by them is that they having worked for more than 240 days continuously in a calendar year and the nature of work discharged by them being of permanent nature they are entitled to be absorbed against the permanent post as has been held by the Hon'ble Supreme Court in the case of **Secretary HSEB vs. Suresh and others reported in AIR 1999 Supreme Court 1160**. The management in total disregard of the provision of law laid u/s 33A of the Industrial dispute Act terminated their service when their claim for regularization was pending before the conciliation officer. They are unemployed since 04.06.2002. Thereby they have prayed for an award to be passed directing the management to absorb them on the rolls of the Airport Authority from the respective initial dates of their joining into employment as regular and permanent employee and allow them proper pay scale and all consequential benefits alongwith a direction of reinstate with full back wages from 04/06/2002.

The management Airport Authority of India appeared and filed WS refuting the stand taken by the claimant workmen. In the WS it has been stated that the claimant/workmen were never in the employment of the Airport Authority of India. They might have been engaged by and worked under the contractor who during different time period had entered into contract with the Airport Authority of India for execution of different works. Thus, there exists no employer and employee relationship between the respondent and the workmen. These workmen having not been appointed by the respondent the question of terminating their service at any point of time doesn't arise. The management has further stated the contractors engaged following the codal procedure undertake to execute the work entrusted to them having full independence of engaging manpower for such execution. The work of the persons engaged by the contractor is never supervised or controlled by the management as the contractor is legally bound to execute the work to the satisfaction of the respondent as per the terms of the contract. While calling upon the workmen to prove the appointment supervision and control over their work by the respondent the later has further stated that the Airport Authority of India has no record of the period for which the workmen/claimants are claiming their deployment by the contractor. It has further been stated that the claimants have relied upon the judgments of the Hon'ble supreme court in Air India statutory corporation vs. United Labour Union and others decided in the year 1996 in which it was held that the workmen working in the field of sweeping dusting and cleaning as contract labour, and on abolition and contract labour system in pursuance of the notification dated 09.12.1976 are liable to be absorbed in the establishment is no more the law governing the field since the Hon'ble Supreme court in the year 2001 in the matter of Steel Authority of India vs. National Union Waterfront Workers have overruled the judgment of Air India Statutory corporation referred supra holding that neither section 10 of the CLRA Act nor any other provision in the Act by necessary implication provides for automatic absorption of the contract labour on issuing a notification by Appropriate Government. The Principal employer cannot be required to ordered absorption of the contract labour in the concerned establishment. In addition to that the respondent has stated that the case of the claimants is not maintainable as has not been espoused by the competent union. The other stand taken is that the notification of the government of India dated 09.12.1976 having been quashed by the Hon'ble Supreme Court

the claimants cannot asked for automatic absorption in the establishment of the respondent. Thereby the respondent has prayed for dismissal of the claim petition.

Considering the rival pleadings the points which emerged for consideration are:

1. Whether the claimants are entitled to the absorbed against the permanent vacancies by the respondent and their services be regularized.

2. If the services of the claimant were illegally terminated during the pendency of an industrial dispute and they are entitled to be reinstated.

3. To what relief the claimants are entitled to.

On behalf of the claimants the workmen testified as WW1 to WW4. In addition to that they also examined the General Secretary of the Union as WW5 to prove the espousal of the dispute. On their behalf several documents were placed on records which have been marked in a series of WW1/1 to WW1/19. These documents include internal letter correspondence of the respondent the attendance register, the duty register reflecting the names of the claimants etc. On behalf of the respondent one suresh kumar was examined as MW1. All the witnesses were cross examined at length by the adversary.

At the outset of the argument the Ld. A/R for the workmen submitted that the workmen are entitled for the relief sought for since they have successfully proved that they were working in the premises of the respondent and the later had full control and supervision over their work. Though no document has been produced by the workmen to prove that they were paid salary by the respondent, the same cannot stand on their way for proving their relationship with the respondent as the employer since the said documents remains in possession of the employer having no access to the same by the employee. It was also argued that the attendance registers and the duty distribution book (photocopies) filed by the claimant/workmen clearly proved that they had worked for more than 240 days continuously in a calendar year in the establishment of the respondent who illegally terminated their service when the industrial dispute was pending before the conciliation officer. It was also argued that after terminating the service of these workmen the management employed fresh workers without giving opportunity to them. Thereby there was a gross violation of the provision of section 25-F, 25-G and 25-H of the ID Act. Though the management has all along pleaded that the workmen were employed by the contractor no evidence to that effect which is supposed to be in the possession of the management has been placed on record. Not even the contract entered between the management and the contractor was placed on record or any contractor was called upon to testify that the claimants were working under them. From the duty distribution chart containing the signature of the workmen and the official of the respondent it is clearly proved that the respondent management had complete control or supervision over the workmen. To support the argument the Ld. A/R for the workmen has placed reliance in the case of **Balwant Rai Saluja vs. Air India Limited reported in AIR 2015 SC 375** and the case of **Bhilwara Dugdh Udpadak Sahakari Samiti Limited vs. Vinod Kumar Sharma and others reported in AIR 2011 SC3546** and in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma & Others reported in (2002)2 SCC 244**. In addition to this the claimants pointed out the admissions made by the management witness during his examination and cross examination in this proceeding.

The Ld. A/R for the management on the other hand submitted that the entire claim is based upon a misconception of fact and law. The notification of 1976 and the judgment of Air India Statutory Corporation have been quashed and overruled respectively by the Hon'ble Supreme Court and the judgment of Hon'ble Supreme Court in the case of Steel Authority of India vs. National Union Waterfront workers now governs the field. In view of the said principle the contract labour cannot be automatically absorbed by the management. Moreover, these claimants were not the contract labour of the respondent but the persons engaged by the contractors awarded with the contract for execution of particular work. Hence, the claim of the workmen is untenable. The management has also disowned the liability for the alleged illegal termination or non compliance of the provisions of section 25-F, 25-G, 25-H of the Id Act.

FINDINGS

Point No. 1

The workmen have filed affidavit stating the specific dates when they joined in the employment of the management. They have further stated that they were continuing their work uninterruptedly till the date of their termination i.e. 04.06.2020. Neither the appointment letter was issued to them nor any letter of termination was served on them. During the period of work they were paid a paltry sum of Rs. 111.60/- per day. However, they were working under the direct control and supervision of the management though they were shown to be the employees of the contractor who was not in existence at all and it was showed by the management only to deprive them of their legitimate rights. To support their stand they have filed photocopies of the attendance register and the duty distribution register marked as WW1/14 and WW1/15. These witnesses were cross examined at length by the management. But the oral statement of the workmen in this regard could not be

demolished during cross examination. The duty distribution chart filed by the claimants contains the signature of the occupant of the premises i.e. the official of the Airport Authority where the workmen were engaged for work. On behalf of the workmen some internal letter correspondences made between the GM RCDU and the General Manager Civil Engineering Wing have been filed which clearly shows that these 4 workmen claimant were working continuously for Airport Authority though the contracts had changed hands. Basing on these documents and oral testimony of the claimants the Ld. A/R for the workmen submitted that the evidence on record sufficiently proves that the workmen were the employees of the management and the contractors has been intentionally projected between the management and the workmen in order to deprive them of their legitimate right.

It is also the stand taken by the workmen that they were contract labours working under the management and when the Contract Labour Regulation and Abolition Act came into force they are required to be absorbed in the management as the work done by them are perennial in nature. There is no dispute on the facts that the work done by the sweepers likes sweeping and cleaning are perennious in nature and the workmen have stated in their oral testimony that the management after removing them from job have taken into new persons for discharge of the said work. But the management have all along pleaded that these workmen were never employed by the management. It is admitted that no appointment letter or termination letter were issued to them by the management. Except the attendance register and duty distribution register no other document has been filed by the claimants to prove their employee status under the management.

In the case of **Steel Authority of India vs. National Union Waterfront Workers reported in (2001)7SCC Page1** the Hon'ble Apex Court in order to resolve the dispute relating to employer and employee relationship have prescribed for the effective control test. Not only that way back in the year 1958 the Hon'ble Apex Court in the case of **Chintaman Rao vs. State of MP reported in AIR 1958Page 388** had ruled that the concept of employment involves 3 ingredients (1)employer (11)employee (iii)contract of employment. The employer is one who employes or engages the service of other person. The employee is one who works for and another for hire. The employment is the contract of service between the employer and the employees, where under the employee agrees to serve the employer subject to his control and supervision. In the case of workmen of **Food Corporation of India vs. Food Corporation of India reported in AIR 1985(SC)670** the Hon'ble Apex Court further pronounce that the contract of employment always discloses a relationship of command and obedience between them. Where a contractor employees a workmen to do the work which he contracted with a third person to accomplish, the workmen of the contractor would not become more than the workmen of the third person.

On behalf of the workmen the Ld. A/R took this tribunal through the case of **Balwant Rai Saluja vs. Air India Limited** decided by the Hon'ble Apex Court to submit that the doctrine of Piercing the corporate vail the comes to be used in a scenario wherein it is evident that the company or contractor was a mere camouflage or sham, deliberately created by the persons exercising control over the said company or the contractor for the purpose of avoiding the liability. Intent of piercing the wail must be to remedy wrong done by the person controlling the company.

In this case in view of the rival stands taken by both the parties it is felt proper to examine if the presence of the contractor was intended by the respondent to avoid the liability and if the respondent was exercising supervision or control over the act of the claimants.

In this proceeding the workmen have all along maintained that they were working under the supervision or control of the management and not the contractor. While testifying as WW1,WW2, WW3 and WW4 they have deposed to prove the same. To support their stand they have filed documents like attendance register and duty register. They have also filed the internal communication made between two general managers wherein it has been mentioned that these 4 workmen are working continuously for the management though the contractors change hands. On behalf of the management one witness namely Suresh kumar was examined. During cross examination he clearly stated that the workmen are deemed to be the employees of the contractor not airport authority. This statement alone goes to show that airport authority have no document to prove that these workmen were the employees of the contractor. He further admitted not to have seen any contract between any contractor and airport authority which falsifies the stand taken by the management in the written statement that during the relevant time period several contractors were engaged to execute specific work and these claimants might have been engaged by any of them. The witness for the management further admitted during cross examination that these 4 workmen were working for the airport authority till 04.06.2002 and there was an ongoing dispute between them and the respondent for regularization of their service and during the pendency of that conciliation proceeding the service of these workmen were brought to an end and while doing so no termination notice, notice pay, retrenchment compensation was paid nor the rule of last come first go was followed. He has also admitted that after removal of these workmen new hands have been hired for discharging the said function which lead to a conclusion that the work done by these workmen are perennial in nature. He also admitted that the management has no document to prove who were the contractors between the period 1997 to 2002 and no document to prove the engagement of these workmen through the contractor. He also admitted

that when these workmen were working in the premises of the management, the officials of the later used to ask about the work and conduct of these workmen from the officers of the concerned department where they were deployed. The management witness has admitted in clear term to the suggestion that the management of AAI was supervising the work and conduct of these workmen. Hence the oral evidence adduced by the workmen coupled with the documents filed and the statement of management witness lead to a conclusion that during the period starting from 1997 to 2002 these workmen were working in the premises of AAI under the supervision and control of the later and receiving the wage from AAI only. There was no contract or contractor between the workmen and the respondent and the plea that the workmen were the employee of the contractor is nothing but an attempt by the management to deprive them of their lawful rights. Point No.1 is accordingly answered in favour of the workmen and it is held that they were working for the management till their service were dispensed with from 04.06.2002.

Point No. 2

It has been admitted by the respondent that the claimants had preferred writ petition No. WP(C) 7494/1999 before the Hon'ble High Court of Delhi which was disposed of as not maintainable giving liberty to the workmen for approaching the appropriate forum. Thus, the workmen had raised the dispute before the labour commissioner claiming regularization of services. They had filed reply before the labour commissioner when the conciliation proceeding was going on. A copy of the WS has been placed on record. It has been alleged by the claimants that during the pendency of the conciliation proceeding the management pressurized them to withdraw the same. When they did not agree the management as an act of vindication disengaged them from service w.e.f 04.06.2002. The claimants have alleged that their termination was made in contravention of the provisions of section 33A of the Id Act and while doing so the procedure laid u/s 25-f, G, and H were not complied. The management has admitted in the WS about the conciliation proceeding and its participation. But it has denied the alleged termination on the ground that the workmen were never employed nor terminated.

It is a decided principle of law that the employer and employee relationship is a question of fact and the burden lies on him who assorts the existence of the same. While answering point no.1 it has already been held that the workmen have successfully established their relationship as employee of the employer AAI. It is now to be seen if the termination of the workmen was made following the procedure of law or illegal for non compliance of the same. Reference can be made to section 25F of the Id act 1947 which precisely speaks that no workmen not employed in any industry who has been in continuous service for not less than 1 year under an employer, shall be retrenched until the workmen has given one month notice in writing, or has been paid retrenchment compensation. It is the stand of the management that no such notice was required to be served since the workmen were not the employees of the management. Thereby the management has admitted non compliance of the provision of section 25F. In the preceding paragraphs it has already been held that the contract of the management with the so called contractor were sham and nonexistent and infact the workmen were the employees of the management. In that case the mandatory provision of section 25F,G,H were required to be complied before termination. The witness examined by the management has admitted in clear term that on 4th June 2002 when the service of these workmen were discontinued they were not served with termination notice nor paid notice pay, and retrenchment compensation. He also admitted that a conciliation proceeding was then going on before the Labour Commissioner but no permission was taken from the competent authority while deleting the names of these workmen from the attendance register. This clearly proves that the services of these workmen were brought to an abrupt end w.e.f 04th June 2002, when a conciliation proceeding was pending and without following the mandatory provisions of section 25F,G,H. This point is accordingly answered in favour of the workmen and it is held that their services were illegally terminated by the management.

Point No. 3

Way back in the year 1980 the Hon'ble Apex Court of India in the case of Surendra Kumar Verma and Others vs. CGIT Delhi had observed that

> "Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days or a contractual worker is not entitled automatically to regularization came to hold that in appropriate cases regularization can be ordered.

Here is a case where workmen have prayed for a relief simpliciter for reinstatement to service with appropriate pay scale, other service benefits and back wages. They have specifically stated that since the date of

termination they have not been gainfully employed. The management has not led any evidence to prove that the workmen have been gainfully employed during the pendency of this proceeding. The basic issue in the present proceeding was the status of the workmen which has been decided in their favour. The Ld. Counsel for the management by placing reliance in the case of **Secretary State of Karnatak and others vs. Uma Devi reported in (2006)4SCC1**submitted that the appointment of the contractual employees and regularization of their service is not an automatic process. He also drew the attention of the tribunal that these workmen are out of work since 2002. Hence, it will be inappropriate either to reinstate with back wages or regularize their service. But this argument advanced by the management is not accepted since in a later judgment, i.e. **Maharashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8SCC Page 556** the Hon'ble Apex Court have held in clear terms that the principle decided in the case of Umadevi is not applicable to Labour cases as the judgment in the case of Uma Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Besides the case of Maharashtra Road Transport referred supra the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

> "The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to Unfair Labour Practice being engaged for work on temporary basis for prolong period.

It is a rule of law that for no work done no remuneration is to be paid. Furthermore, there is no evidence on record to presume that there are vacancies for the nature of work discharged by these 4 workmen prior to their termination. Hence, keeping the principle in view it is felt proper that instead of passing an order for reinstatement of these workmen or regularization of their service justice would be best served if they would be compensated for the wrong done to them. Since they have not discharged any duty during the intervening period no order can also be passed for payment of back wages to them.

"Hon'ble Apex Court in the case of **General Manager, Haryana Roadways vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under:-

> "8. There is no rule of thumb that in every case where the industrial Tribunal gives a finding that the termination of service was in violation of section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighted and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

In the case of **Hari Nandan Prasad vs. Food Corporation of India (2014) 7 SCC190**. It was observed by the Apex Court as under:-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of section 25-F although may be set aside but an award of reinstatement should not, however automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wager has not been found to be proper by the supreme Court an instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post of a permanent employee. The reasons for

denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of nonpayment of under section 25-F of the Industrial dispute Act, even after reinstatement it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

Having regard to the judicial trends and facts & circumstances of the present case, this tribunal considers that compensation amount of Rs. 10,00,000/- will be just and reasonable. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant. The termination of the workmen by the management is held to be illegal. The management AAI is directed to pay compensation of Rs. 10,00,000/- to each of the claimant/workman within 3 months from the date when the award would become executable without interest. If the management will fail to comply the direction within 3 months the amount shall carry interest @9% per annum from the date it is payable till final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 24 जून, 2021

का.आ. 402.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन.एस. मार्बल प्रा. लि., उदयपुर के प्रबंधतत्र, संबद्ध नियोजको और जनजाति खान मजदूर संघ, उदयपुर, के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर के पंचाट (संदर्भ सं. 29/2015) को प्रकाशित करती है।

[सं. एल-28011/21/2015-आईआर (एम]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 24th June, 2021

S.O. 402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2015) of the Industrial Tribunal & *Labour Court,* UDAIPUR as shown in the Annexure, in the industrial dispute between the management of N.S. Marbel Pvt. Ltd., Udaipur and Janjaati Khan Mazdoor Sangh, Udaipur.

[No. L-28011/21/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी –– श्री अरूण कुमार दुबे

प्रकरण संख्या 29/2015 I.T.R.(C)

श्री अध्यक्ष, जनजाति खान मजदूर संघ,
मसारो की ओवरी, तहसील ऋषभदेव, जिला उदयपुर ...प्रार्थी

विरूद्ध

श्री मैनेजर,
एन.एस. मार्बल प्रा. लि.
मसारो की ओवरी, जिला उदयपुर ...विपक्षी

उपस्थित :–

प्रार्थी की और से : श्री रमेश नन्दवाना, अधिवक्ता

विपक्षी की और से : कोई उपस्थित नहीं–कार्यवाही एक पक्षीय

:: पंचाट ::

दिनांक 07 अगस्त, 2020

भारत सरकार के श्रम विभाग की अधिसूचना क्रमांक L-28011/ 21/2015-IR{M} New Delhi दिनांक 22.06.2015 के द्वारा निम्नांकित विवाद इस न्यायालय को अधिनिर्णयार्थ प्रेषित किया गया –

''क्या यूनियन जनजाति खान मजदूर संघ, मसारो की ओवरी, ऋषभदेव जिला उदयपुर द्वारा प्रबन्धन के समक्ष उठायी गयी निम्नलिखित मांगे न्यायोचित है ? यदि हां तो श्रमिक किस राहत को पाने के अधिकारी है ?''

(1) 1 वर्ष में 12 दिन की छुट्टी– 26 जनवरी, 15 अगस्त, रक्षा बंधन, मकर संक्रान्ति, होली पर 4 दिन, दीपावली पर 4 दिन, 1 वर्ष में त्यौहारो पर 12 दिन छुट्टी देवे और 12 छुट्टी का पैसा देवें,

(2) श्रमिकों को हाजरी कार्ड मय फर्म के साथ उपलब्ध करावे,

(3) 250 हाजरी भरने पर पी.एल./सी.एल. की 18 छुट्टी का पैसा दिया जावे ।

(4) 250 हाजरी भरने पर 12 प्रतिशत बोनस दिया जावे,

(5) वर्ष में 2 जोडी जूते, कपडे व सुरक्षा की सामग्री दी जावे,

(6) मार्बल में ठेका प्रथा बन्द करे एवं सभी माईन्सों को कम्पनी के द्वारा चलाया जावे,

(7) यूनियन द्वारा श्रमिको के लिए वेतन दरो की मांग

क्र.सं.	केटेगरी	5 से 10 वर्ष के अनुभव पर (8 घंटे का वेतन)
1.	मिस्त्री	700 रुपये
2.	मशीन ऑपरेटर	700 रुपये
3.	चेन सॉ ऑपरेटर	600 रुपये
4.	सुपरवाईजर	500 रुपये
5.	इलेक्ट्रीशियन	600 रुपये
6.	वेल्डर	500 रुपये
7.	डेरीक क्रेन ऑपरेटर	500 रुपये
8.	डम्पर ड्राईवर	400 रुपये
9.	जे.सी.बी. ऑपरेटर	400 रुपये
10.	वायर सॉ ऑपरेटर	500 रुपये
11.	ऐल्टी फोर ऑपरेटर	450 रुपये
12.	ड्रीलिंग ऑपरेटर	400 रुपये
13.	स्टोर रूम	350 रुपये
14.	चौकीदार	300 रुपये

उक्त आशय का प्रसंग प्राप्त होने पर न्यायालय द्वारा प्रकरण दर्ज किया जाकर सम्बन्धित पक्षकारान को नोटिस जारी किये गये। जिस पर प्रार्थी संघ की और से दिनांक 02.02.2017 को क्लेम किया गया था तथा विपक्षी की और से कोई उपस्थित नहीं हुआ, इसलिये उसकें विरूद्ध एक पक्षीय कार्यवाही अमल में लाई गई ।

प्रार्थी द्वारा प्रस्तुत क्लेम के तथ्य संक्षेप में इस प्रकार है कि– प्रार्थी यूनियन एवं विपक्षी के समक्ष पी.एफ. काटे जाने, छुट्टियो बाबत, हाजरी कार्ड उपलब्ध कराये जाने, पी.एल., बोनस आदि बाबत मांग पत्र रखा था जो मांगे अत्यन्त

ही उचित एवं महत्वपूर्ण थी, लेकिन विपक्षी द्वारा इन मांगो को मांगने से इन्कार कर दिया । श्रमिक यूनियन द्वारा उठाई मांगे दिनांक 18.04.2013 को स्वीकार कर ली गई, लेकिन उसके बाद भी इन्हें लागू नही किया गया । इसलिये श्रमिक उक्त मांग पत्र की मांगो का लाभ दिनांक 18.04.2013 से प्राप्त करने के अधिकारी है। इसलिये केन्द्र सरकार से प्राप्त रेफरेन्स में वर्णित मांग पत्र मानने व तद्नुसार भुगतान कराये जाने बाबत निर्णय पारित कराये जाने की प्रार्थना की।

विपक्षी की और दिनांक 20.07.2018 को अभिभाषक विवेक व्यास ने वकालत नामा पेश किया उसके पश्चात् दिनांक 10.02.2020 विपक्षी की और से कोई उपस्थित नहीं हुआ, इसलिये विपक्षी के विरूद्ध एक पक्षीय कार्यवाही अमल में लाई गई ।

प्रार्थी पक्ष की और से महामंत्री भेरूलाल मीणा का शपथ पत्र पेश हुआ।

प्रार्थी अभिभाषक की एक पक्षीय बहस सुनी गई । पत्रावली का अवलोकन किया गया ।

प्रार्थी पक्ष की और से अपने क्लेम प्रार्थना पत्र में यह प्रकट किया कि यूनियन द्वारा मांगें उठाई गई थी जो दिनांक 18.04.2013 को स्वीकार कर ली गई थी, मगर इसके उसके बाद भी इन्हें लागू नहीं किया गया । जबकि प्रार्थी पक्ष की और से प्रस्तुत शपथ पत्र में यह प्रकट किया कि विपक्षी खदान मालिक द्वारा मांगो को मानने से इन्कार कर दिया ।

इस प्रकार क्लेम प्रार्थना पत्र व साक्ष्य में विरोधाभासी तथ्य प्रकट किये गये है । इसके अलावा यदि यूनियन द्वारा उठाई गई मांग को दिनांक 18.04.2013 को स्वीकार कर लिया गया तो उस सम्बन्ध में प्रार्थी पक्ष को वह दस्तावेज पेश करना चाहिये था एवं शपथ पत्र में यह प्रकट किया गया कि विपक्षी खदान मालिक द्वारा मांगो को मानने से इन्कार किया गया तो ऐसी मांगे कब व किसने रखी, किसके समक्ष रखी व विपक्षी द्वारा किस प्रकार से कितनी मांगो को मानने से इन्कार किया या सभी मांगो को मानने से इन्कार किया, ऐसी कोई स्पष्ट मौखिक या दस्तावेजी साक्ष्य पेश नहीं की गई है और यदि ऐसा कोई दस्तावेज विपक्षी के पास था तो प्रार्थी पक्ष को प्रार्थना पत्र प्रस्तुत कर विपक्षी से दस्तावेज तलब कराना चाहिये था, लेकिन प्रार्थी पक्ष द्वारा ऐसा कोई प्रयास नहीं किया गया ।

प्रार्थी पक्ष की और से ऐसी कोई स्पष्ट मौखिक एवं दस्तावेजी साक्ष्य पेश न होने से यह साबित नही होता है कि प्रार्थी यूनियन द्वारा विपक्षी संस्थान से किन्ही मांगो के सम्बन्ध में कोई मांग पत्र रखा और विपक्षी ने उन्हें स्वीकार नहीं किया हो । अतः साक्ष्य के अभाव में यह भी साबित नही होता है कि प्रार्थी यूनियन ने विपक्षी संस्थान के समक्ष मांगे उठायी हो और विपक्षी द्वारा उन्हें स्वीकार नहीं किया हो ।

उक्त विवेचन के आधार पर यह साबित नही होता है कि प्रार्थी यूनियन द्वारा विपक्षी संस्थान के समक्ष कोई मांग रखी हो और उन्हें विपक्षी द्वारा स्वीकार नहीं की हो । इसलिये प्रार्थी पक्ष कोई राहत पाने का अधिकारी नहीं है ।

अतः भारत सरकार द्वारा प्रेषित प्रसंग दिनांक 22.06.2015 को उत्तरित करते हुए पंचाट इस प्रकार पारित किया जाता है कि–

प्रार्थी यूनियन जनजाति खान मजदूर संघ, मसारो की ओवरी, ऋषभदेव द्वारा विपक्षी संस्थान के समक्ष कोई मांग उठाया जाना व विपक्षी संस्थान द्वारा उन्हें स्वीकार नहीं किये जाने का कोई तथ्य साबित नहीं हुआ है।

अतः प्रार्थी पक्ष कोई राहत पाने का अधिकारी नहीं है ।

पंचाट प्रकाशनार्थ समुचित सरकार को भेजा जावें ।

पंचाट आज दिनांक 07 अगस्त, 2020 को खुले न्यायालय में लिखाया जाकर सुनाया गया ।

अरूण कुमार दूबे, पीठासीन अधिकारी

नई दिल्ली, 24 जून, 2021

का.आ. 403.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रूकमणी मार्बल, बिरसुखा मार्बल, उदयपुर के प्रबंधतत्र, संबद्ध नियोजकों और जनजाति खान मजदूर संघ, उदयपुर, के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर के पंचाट (संदर्भ सं. 22/2015) को प्रकाशित करती है।

[सं. एल-28011/08/2015-आईआर (एम]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 24th June, 2021

S.O. 403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2015) of the Industrial Tribunal & *Labour Court,* UDAIPUR as shown in the Annexure, in the industrial dispute between the management of Rukhmani Marbel, Birsukha Marbel, Udaipur and Janjaati Khan Mazdoor Sangh , Udaipur.

[No. L-28011/08/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी –– श्री अरूण कुमार दुबे

प्रकरण संख्या 22 / 2015 I.T.R.(C)

श्री अध्यक्ष, जनजाति खान मजदूर संघ,
मसारो की ओवरी, तहसील ऋषभदेव, जिला उदयपुर ...प्रार्थी

विरूद्ध

श्री मैनेजर,
रूकमणी मार्बल, बिरसुखा मार्बल
मसारो की ओवरी, जिला उदयपुर ...विपक्षी

उपस्थित :–

प्रार्थी की और से : श्री रमेश नन्दवाना, अधिवक्ता

विपक्षी की और से : कोई उपस्थित नहीं–कार्यवाही एक पक्षीय

:: **पंचाट** ::

दिनांक 07 अगस्त, 2020

भारत सरकार के श्रम विभाग की अधिसूचना क्रमांक L-28011/08/2015-IR(M) New Delhi दिनांक 22.06.2015 के द्वारा निम्नांकित विवाद इस न्यायालय को अधिनिर्णयार्थ प्रेषित किया गया –

''क्या यूनियन जनजाति खान मजदूर संघ, मसारो की ओवरी, ऋषभदेव जिला उदयपुर द्वारा प्रबन्धन के समक्ष उठायी गयी निम्नलिखित मांगे न्यायोचित है ? यदि हां तो श्रमिक किस राहत को पाने के अधिकारी है ?''

(1) 1 वर्ष में 12 दिन की छुट्टी– 26 जनवरी, 15 अगस्त, रक्षा बंधन, मकर संक्रान्ति, होली पर 4 दिन, दीपावली पर 4 दिन, 1 वर्ष में त्यौहारो पर 12 दिन छुट्टी देवे और 12 छुट्टी का पैसा देवें,

(2) श्रमिकों को हाजरी कार्ड मय फर्म के साथ उपलब्ध करावे,

(3) 250 हाजरी भरने पर पी.एल./सी.एल. की 18 छुट्टी का पैसा दिया जावे ।

(4) 250 हाजरी भरने पर 12 प्रतिशत बोनस दिया जावे,

(5) वर्ष में 2 जोडी जूते, कपडे व सुरक्षा की सामग्री दी जावे,

(6) मार्बल में ठेका प्रथा बन्द करे एवं सभी माईन्सों को कम्पनी के द्वारा चलाया जावे,

(7) यूनियन द्वारा श्रमिको के लिए वेतन दरो की मांग

क्र.सं.	केटेगरी	5 से 10 वर्ष के अनुभव पर (8 घंटे का वेतन)
1.	मिस्त्री	700 रुपये
2.	मशीन ऑपरेटर	700 रुपये
3.	चेन सॉ ऑपरेटर	600 रुपये

4.	सुपरवाईजर	500 रुपये
5.	इलेक्ट्रीशियन	600 रुपये
6.	वेल्डर	500 रुपये
7.	डेरीक क्रेन ऑपरेटर	500 रुपये
8.	डम्पर ड्राईवर	400 रुपये
9.	जे.सी.बी. ऑपरेटर	400 रुपये
10.	वायर सॉ ऑपरेटर	500 रुपये
11.	ऐल्टी फोर ऑपरेटर	450 रुपये
12.	ड्रीलिंग ऑपरेटर	400 रुपये
13.	स्टोर रूम	350 रुपये
14.	चौकीदार	300 रुपये

उक्त आशय का प्रसंग प्राप्त होने पर न्यायालय द्वारा प्रकरण दर्ज किया जाकर सम्बन्धित पक्षकारान को नोटिस जारी किये गये। जिस पर प्रार्थी संघ की और से दिनांक 06.02.2017 को क्लेम किया गया था तथा विपक्षी की और से कोई उपस्थित नहीं हुआ, इसलिये उसके विरूद्ध एक पक्षीय कार्यवाही अमल में लाई गई।

प्रार्थी द्वारा प्रस्तुत क्लेम के तथ्य संक्षेप में इस प्रकार है कि– प्रार्थी यूनियन एवं विपक्षी के समक्ष पी.एफ. काटे जाने, छुट्टियो बाबत, हाजरी कार्ड उपलब्ध कराये जाने, पी.एल., बोनस आदि बाबत मांग पत्र रखा था जो मांगे अत्यन्त ही उचित एवं महत्वपूर्ण थी, लेकिन विपक्षी द्वारा इन मांगो को मांगने से इन्कार कर दिया । श्रमिक यूनियन द्वारा उठाई मांगे दिनांक 18.04.2013 को स्वीकार कर ली गई, लेकिन उसके बाद भी इन्हें लागू नही किया गया । इसलिये श्रमिक उक्त मांग पत्र की मांगो का लाभ दिनांक 18.04.2013 से प्राप्त करने के अधिकारी है। इसलिये केन्द्र सरकार से प्राप्त रेफरेन्स में वर्णित मांग पत्र मानने व तद्नुसार भुगतान कराये जाने बाबत निर्णय पारित कराये जाने की प्रार्थना की।

विपक्षी की और से कोई उपस्थित नहीं हुआ । इसलिये उनकी ओर से कोई जबाब या साक्ष्य पेश नही हुई व विपक्षी के विरूद्ध एक पक्षीय कार्यवाही अमल में लाई गई।

प्रार्थी पक्ष की और से महामंत्री भेरूलाल मीणा का शपथ पत्र पेश हुआ।

प्रार्थी अभिभाषक की एक पक्षीय बहस सुनी गई । पत्रावली का अवलोकन किया गया।

प्रार्थी पक्ष की और से अपने क्लेम प्रार्थना पत्र में यह प्रकट किया कि यूनियन द्वारा मांगें उठाई गई थी जो दिनांक 18.04.2013 को स्वीकार कर ली गई थी, मगर इसके उसके बाद भी इन्हें लागू नहीं किया गया । जबकि प्रार्थी पक्ष की और से प्रस्तुत शपथ पत्र में यह प्रकट किया कि विपक्षी खदान मालिक द्वारा मांगो को मानने से इन्कार कर दिया।

इस प्रकार क्लेम प्रार्थना पत्र व साक्ष्य में विरोधाभासी तथ्य प्रकट किये गये है । इसके अलावा यदि यूनियन द्वारा उठाई गई मांग को दिनांक 18.04.2013 को स्वीकार कर लिया गया तो उस सम्बन्ध में प्रार्थी पक्ष को वह दस्तावेज पेश करना चाहिये था एवं शपथ पत्र में यह प्रकट किया गया कि विपक्षी खदान मालिक द्वारा मांगो को मानने से इन्कार किया गया तो ऐसी मांगे कब व किसने रखी, किसके समक्ष रखी व विपक्षी द्वारा किस प्रकार से कितनी मांगो को मानने से इन्कार किया या सभी मांगो को मानने से इन्कार किया, ऐसी कोई स्पष्ट मौखिक या दस्तावेजी साक्ष्य पेश नहीं की गई है और यदि ऐसा कोई दस्तावेज विपक्षी के पास था तो प्रार्थी पक्ष को प्रार्थना पत्र प्रस्तुत कर विपक्षी से दस्तावेज तलब कराना चाहिये था, लेकिन प्रार्थी पक्ष द्वारा ऐसा कोई प्रयास नहीं किया गया।

प्रार्थी पक्ष की और से ऐसी कोई स्पष्ट मौखिक एवं दस्तावेजी साक्ष्य पेश न होने से यह साबित नही होता है कि प्रार्थी यूनियन द्वारा विपक्षी संस्थान से किन्ही मांगो के सम्बन्ध में कोई मांग पत्र रखा और विपक्षी ने उन्हें स्वीकार नहीं किया हो । अतः साक्ष्य के अभाव में यह भी साबित नही होता है कि प्रार्थी यूनियन ने विपक्षी संस्थान के समक्ष मांगे उठायी हो और विपक्षी द्वारा उन्हें स्वीकार नहीं किया हो।

उक्त विवेचन के आधार पर यह साबित नही होता है कि प्रार्थी यूनियन द्वारा विपक्षी संस्थान के समक्ष कोई मांग रखी हो और उन्हें विपक्षी द्वारा स्वीकार नहीं की हो । इसलिये प्रार्थी पक्ष कोई राहत पाने का अधिकारी नहीं है।

अतः भारत सरकार द्वारा प्रेषित प्रसंग दिनांक 22.06.2015 को उत्तरित करते हुए पंचाट इस प्रकार पारित किया जाता है कि–

प्रार्थी यूनियन जनजाति खान मजदूर संघ, मसारो की ओवरी, ऋषभदेव द्वारा विपक्षी संस्थान के समक्ष कोई मांग उठाया जाना व विपक्षी संस्थान द्वारा उन्हें स्वीकार नहीं किये जाने का कोई तथ्य साबित नहीं हुआ है।

अतः प्रार्थी पक्ष कोई राहत पाने का अधिकारी नहीं है ।

पंचाट प्रकाशनार्थ समुचित सरकार को भेजा जावें ।

पंचाट आज दिनांक 07 अगस्त, 2020 को खुले न्यायालय में लिखाया जाकर सुनाया गया ।

अरूण कुमार दूबे, पीठासीन अधिकारी

नई दिल्ली, 28 जून, 2021

का.आ. 404.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 18/2015) को प्रकाशित करती है ।

[सं. एल-12011/09/2015-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 28th June, 2021

S.O. 404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/09/2015-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/18/2015

Present: P. K. Srivastava, H.J.S..(Retd)

The General Secretary,
Dainik Vetan Bhogi Bank Karmachari Sangathan,
F-1, Karambhoomi'Tripti Vihar'
Opp. Engineering College,
Ujjain (M.P.) ...Workman

Versus

The Chief General Manager,
State Bank of India,
L.H.O.
Bhopal (M.P.) ...Management

AWARD

(Passed on this 10th day of March-2021)

1. As per letter dated 13/2/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-12011/09/2015-IR(B-1). The dispute under reference relates to:

> "***Kya Mahasachiv, dainik vetan bhogi karmachari sangthan dwara Shri Virendra Narwale ke State Bank mein date 20-7-2000 se 16-8-2011 tak holkar college, Indore mein karyarat rehne ke doran ka dwipakshiya samjhota ke anusar dey vetan ke mang karna nyayuchhit hai? Yedi haan to shri Virendra Narwale ked anutosh ke adhikari hai?".***

2. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defence.

3. The case of the workman as stated in his statement of claim is that he was engaged as a daily wager on casual basis by the then Manager of the Branch on 20-7-2000 as Peon on a daily wage of Rs.50/- per day under the orders of the Manager of the Branch. He continued as a Peon till 16-8-2011 in the Branch. His wages were raised from Rs.50/- to Rs.200 per day during the course of time. The Branch which was earlier under the Management of State Bank of Indore merged with the State Bank of India in 20-8-2010. According to the workman, his wages were paid through vouchers and by cheques, lateron. He was paid bonus during this period. According to the workman he is entitled to be paid wages as per the regular employees according to the Bi-Partite Settlement Para 4.5 which was denied to the workman. He first raised the dispute with the Conciliation Officer. After failure of conciliation, reference was sent by appropriate Government to this Tribunal for adjudication. The workman has prayed that he be granted relief of equal wages at par with regular employees of his cadre, in the light of the Bi-Partite Settlement.

4. The main objection to the claim raised by the Management is that the Bi-Partite Settlement is reached at between the Indian Bank's Association and All India Bank Employees Union relates to regular employees who are either permanent or temporary and not to the daily wagers. Hence the workman is not entitled to the relief claimed. The workman has filed total 19 photocopy documents, all denied by the Management. The Management has not filed any documents. The workman has examined himself on oath and has proved the photocopy documents Exhibits W-1 to W-16. The Management has examined himself on oath and has been cross-examined. The Management has examined its employee and witness Anil Kumar Sharma.

5. In his statement of oath, the workman has reiterated his claim and stated that he was not paid wages even in accordance with the minimum wages declared by the Government of India. The Management witness has stated that the workman was engaged purely on casual basis as a daily wager, subject to availability of work and he was paid wages as per rules. He further states that the workman was not recruited through the selection process against any vacancy. He never worked continuously for 240 days in any year. The Bi-partite Settlement between the Bank's Association and Various Employees Union relates to the wage structure of permanent and temporary employees and not to the daily wagers. Hence the workman cannot claim parity with permanent employees with regard to wages.

6. Both the sides have filed written arguments which have been perused by me. Learned counsel for Management has relied on case law **State of Haryana & Another Vs. Tilak Raj**(2003)6 SCC 123, wherein it has been held that **:-"Equal pay for equal work does not apply with respect to daily wagers."** No Rule, law or precedence has been cited by the workman to show that the principle of equal pay for equal work apply to the daily wagers also. The Bi-Partite Settlement also does not prescribe this Rule, hence I am constrained to hold that the claim of workman has no merit and he is not entitled to any relief.

7. On the basis of the above discussion, following award is passed:-

A. The action of Management in not granting the workman the relief claimed by him is held to be legal and justified.

B. The workman is held entitled to no relief.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 28 जून, 2021

का.आ. 405.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 89/2014) को प्रकाशित करती है।

[सं. एल-12011/69/2014-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 28th June, 2021

S.O. 405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/69/2014-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/89/2014

Present: P.K.Srivastava, H.J.S..(Retd)

The General Secretary,
Dainik Vetan Bhogi Bank Karmchari Sangathan,
F-1, Karmbhumi' Tripti Vihar'
Opp. Engineering College,
Ujjain (M.P.) ...Workman

Versus

The Chief General Manager,
State Bank of India, Local Head Office
Bhopal (M.P.) ...Management

AWARD

(Passed on this 10th day of March-2021)

As per letter dated 17-11-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/69/2014-IR(B-1). The dispute under reference relates to:

> "***Kya State Bank Shetriya Karyalaya, Indore ke antargath seva shakha Aada Bazar, Indore dwara Shri Sjay Aadiwala ko (Tatkaleen State Bank of Indore)Dwara `16-4-2007 se 10-3-2011 tak kam karwakar denank 11-3-2011 se bena kese notice ya muuwaja ke kaam se betha dena nyayuchhit hai. Agar nahi to Shri Ajay Aadiwal kes anutosh ke adhikari hai .***"

2. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective claim/defence.

3. The case of the workman as stated in his statement of claim is that he was engaged by the Manager of the Branch on 16-4-2007 as peon/sweeper on monthly basis of Rs.600/0 per month. He used to work eight hours daily to the satisfaction of his superiors. His monthly wages were raised from time to time up to 1200/- per month. He was paid his wages by way of bankers cheque. He was also paid bonus for the year 2006-2007 to 2009-2010. He was dis-engaged by the Management Bank on 11-3-2011 without any notice or compensation which is violative of Section 25B, 25F, 25G and Section 25N of the Industrial Disputes Act,1947 herein after referred to as the word "Act." Accordingly the workman has prayed that he be reinstated with all benefits , setting aside his dis-engagement.

4. It has been prayed by the Bank that the workman was engaged temporarily, purely as daily wager for taking miscellaneous works for the period stated by the then employer State Bank of Indore. His engagement was based on administrative needs subject to availability of work. He was never appointed by following recruitment procedure against any vacancy. His engagement to the Branch was subject to availability of work. The Management has denied that he continuously worked for the period more than 240 days in the year preceding his dis-engagement. It is also stated t in his statement that the State Bank of Indore was merged with State Bank of India in the year 2011 and its assets and liabilities were transferred to the State Bank of India, the present Management.

5. In evidence the workman has filed photocopy documents which were not admitted by the Management nor proved by the workman. The workman has examined himself and has been cross-examined.

6. The Management has not examined any witness.

7. The workman and Management have both filed written arguments which have been perused by me along with the record.

8. The main case of the workman is that , he was engaged for a period of 240 days or more in the year preceding the date of his dis-engagement and was terminated without any notice or compensation.

9. The case of Management is that his engagement was purely temporary as a casual labour, subject to availability of work. He was not selected against any post or vacancy, following the due procedure of recruitment.

10. Before entering into the merits , the relevant provision of Section 25B, 25F, 25G and Section 25N of the Industrial Disputes Act,1947 is required to be reproduced, which is as follows:-

Section 25 B:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

[25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an

application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

11. The engagement of the workman is not denied by the workman. Now the question arises, whether he has completed 240 days or more in the year preceding the date of his dis-engagement which is 11-3-2011.The workman has stated this fact on oath. He further states that the photocopy documents which he has filed have been copied from the original documents available in the bank. In his cross-examination, he states that after amalgamation of State of Indore with State Bank of India, he had worked for one year and he was paid through cheque. He was paid bonus also for the period.

12. The photocopy of cheque which the workman has filed relates to the period preceding the date of his dis-engagement which shows that from February-2010 to March-2011 he was paid wages by cheque. Though the original cheques were not produced before the Tribunal but his statement coupled with the photocopy of the cheque makes his case reliable that to in a circumstance when the bank has not rebutted the case of the

workman by any evidence. Accordingly, the statement of the workman for the period of 240 days in the year preceding the date of his dis-engagement is held proved.

13. It is not disputed, that no notice or compensation was given to the workman on his dis-engagement, hence in the light of these proved facts, his dis-engagement is held violative of Section 25B, 25F, 25G and Section 25N of the Industrial Disputes Act,1947.

14. As regards, the relief to be granted to the workman, it is also not disputed that his engagement was purely casual as a daily wager and not against any vacancy or post. It is also established that no procedure was followed in his engagement, hence his reinstatement will be not in the interest of justice. He is held entitled to compensation quantified at Rs.1,00,000/- (Rupees One lakh) in the light of period of tenure spent by the workman with the Bank and other facts as well as circumstances mentioned earlier.

15. On the basis of the above discussion, following award is passed:-

A. The action of the Management Bank in dis-engaging the workman on 11-3-2011 without any notice or compensation is held bad in law.

B. The workman is held entitled to compensation of Rs.1,00,000/-(rupees one lakh) to be paid within 30 days from the date of receipt of the Award by the Bank, failing which interest at bank rate.

16. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 जून, 2021

का.आ. 406.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट संदर्भ संख्या (157/2019) को प्रकाशित करती है।

[सं. एल-12011/44/2019-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 30th June, 2021

S.O. 406.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 157/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/44/2019-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer

Dated 17th March, 2021

Reference (CGITA) No. - 157/2019

(1) The Chief General Manager,
State Bank of India, Local Head Office,
8th Floor, Lal Darwaja,
Ahmedabad (Gujarat) – 380001

(2) The Proprietor, M/s. Hardik Constructions,
M-177/2114, Surya Apartment, Opposite Medical Complex,
Sola Road, Naranpura,
Ahmedabad (Gujarat) - 380054 ...First Parties

V/s

The National General Secretary,
Akhil Bharatiya Safai Mazdoor Sangh,
F-1/F-10, Zavernagar Society, Harni Varsiya Road,
Vadodara (Gujarat) - 390022 ...Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-12011/44/2019-IR (B-I) dated 10.12.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the dispute raised by Akhil Bharatiya Safai Mazdoor Sangh, Vadodara against the management of State Bank of India, LHO, Ahmedabad and their contractor, M/s Hardik Constructions, Ahmedabad over alleged illegal termination of services of Shri Ramesh Dasrathbhai Chavda, part time sweeper and demand for reinstatement in services with back wages w.e.f. 25.07.2018 is legal, just & proper? If so, to what relief the concerned workman, Shri Ramesh Dasrathbhai Chavda, part time sweeper is entitled to and from which date and what other directions are necessary in the matter?"

1. The same reference was received in this Tribunal on 16th December 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than a year has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 30 जून, 2021

का.आ. 407.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 159/2019) को प्रकाशित करती है।

[सं. एल-12011/39/2019-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 30th June, 2021

S.O. 407.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 159/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/39/2019-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer
Dated 17th March, 2021

Reference (CGITA) No. - 159/2019

(1) The Chief General Manager,
State Bank of India, Local Head Office,
8th Floor, Lal Darwaja,
Ahmedabad (Gujarat) - 380001

(2) The Proprietor, M/s. Hardik Constructions,
M-177/2114, Surya Apartment, Opposite Medical Complex,
Sola Road, Naranpura,
Ahmedabad (Gujarat) - 380054 ...First Parties

V/s

The National General Secretary,
Akhil Bharatiya Safai Mazdoor Sangh,
F-1/F-10, Zavernagar Society, Harni Varsiya Road,
Vadodara (Gujarat) - 390022 ...Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-12011/39/2019-IR (B-I) dated 10.12.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the dispute raised by Akhil Bharatiya Safai Mazdoor Sangh, Vadodara against the management of State Bank of India, LHO, Ahmedabad and their contractor, M/s Hardik Constructions, Ahmedabad over alleged illegal termination of services of Shri Sureshbhai Vinubhai Solanki, part time sweeper and demand for reinstatement in services with back wages w.e.f. 25.07.2018 is legal, just & proper? If so, to what relief the concerned workman, Shri Sureshbhai Vinubhai Solanki, part time sweeper is entitled to and from which date and what other directions are necessary in the matter?"

1. The same reference was received in this Tribunal on 16th December 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than a year has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 30 जून, 2021

का.आ. 408.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 164/2019) को प्रकाशित करती है।

[सं. एल-12011/46/2019-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 30th June, 2021

S.O. 408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 164/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/46/2019-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer
Dated 17th March, 2021

Reference (CGITA) No. - 164/2019

1) The Chief General Manager,
State Bank of India, Local Head Office,
8th Floor, Lal Darwaja,
Ahmedabad (Gujarat) - 380001

2) The Proprietor,
M/s. Hardik Constructions,
M-177/2114, Surya Apartment, Opposite Medical Complex,
Sola Road, Naranpura,
Ahmedabad (Gujarat) - 380054 ...First Parties

V/s

The National General Secretary,
Akhil Bharatiya Safai Mazdoor Sangh,
F-1/F-10, Zavernagar Society, Harni Varsiya Road,
Vadodara (Gujarat) - 390022 ...Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-12011/46/2019-IR (B-I) dated 05.12.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the dispute raised by Akhil Bharatiya Safai Mazdoor Sangh, Vadodara against the management of State Bank of India, LHO, Ahmedabad and their contractor, M/s Hardik Constructions, Ahmedabad over alleged illegal termination of services of Shri Sanjay Babubhai Dantali, part time sweeper and demand for reinstatement in services with back wages w.e.f. 25.07.2018 is legal, just & proper? If so, to what relief the concerned workman, Shri Sanjay Babubhai Dantali, part time sweeper is entitled to and from which date and what other directions are necessary in the matter?"

1. The same reference was received in this Tribunal on 16th December 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than a year has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 30 जून, 2021

का.आ. 409.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 166/2019) को प्रकाशित करती है।

[सं. एल-12011/50/2019-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 30th June, 2021

S.O. 409.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 166/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/50/2019-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer
Dated 17th March, 2021

Reference (CGITA) No. - 166/2019

1) The Chief General Manager,
State Bank of India, Local Head Office,
8th Floor, Lal Darwaja,
Ahmedabad (Gujarat) – 380001

2) The Proprietor,
M/s. Hardik Constructions,
M-177/2114, Surya Apartment, Opposite Medical Complex,
Sola Road, Naranpura,
Ahmedabad (Gujarat) - 380054 …First Parties

V/s

The National General Secretary,
Akhil Bharatiya Safai Mazdoor Sangh,
F-1/F-10, Zavernagar Society, Harni Varsiya Road,
Vadodara (Gujarat) - 390022 …Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-12011/50/2019-IR (B-I) dated 05.12.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the dispute raised by Akhil Bharatiya Safai Mazdoor Sangh, Vadodara against the management of State Bank of India, LHO, Ahmedabad and their contractor, M/s Hardik Constructions, Ahmedabad over alleged illegal termination of services of Shri Anil Jitendrabhai Vaghela, part time sweeper and demand for reinstatement in services with back wages w.e.f. 25.07.2018 is legal, just & proper? If so, to what relief the concerned workman, Shri Anil Jitendrabhai Vaghela, part time sweeper is entitled to and from which date and what other directions are necessary in the matter?"

1. The same reference was received in this Tribunal on 16th December 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than a year has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 30 जून, 2021

का.आ. 410.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 169/2019) को प्रकाशित करती है।

[सं. एल-12011/55/2019-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 30th June, 2021

S.O. 410.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 169/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/55/2019-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer
Dated 17th March, 2021

Reference (CGITA) No. - 169/2019

1) The Chief General Manager,
State Bank of India, Local Head Office,
8th Floor, Lal Darwaja,
Ahmedabad (Gujarat) – 380001

2) The Proprietor,
M/s. Hardik Constructions,
M-177/2114, Surya Apartment, Opposite Medical Complex,
Sola Road, Naranpura,
Ahmedabad (Gujarat) - 380054 ...First Parties

V/s

The National General Secretary,
Akhil Bharatiya Safai Mazdoor Sangh,
F-1/F-10, Zavernagar Society, Harni Varsiya Road,
Vadodara (Gujarat) - 390022 ...Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-12011/55/2019-IR (B-I) dated 16.12.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the dispute raised by Akhil Bharatiya Safai Mazdoor Sangh, Vadodara against the management of State Bank of India, LHO, Ahmedabad and their contractor, M/s Hardik Constructions, Ahmedabad over alleged illegal termination of services of Shri Chetan Naranbhai Chouhan, part time sweeper and demand for reinstatement in services with back wages w.e.f. 25.07.2018 is legal, just & proper? If so, to what relief the concerned workman, Shri Chetan Naranbhai Chouhan, part time sweeper is entitled to and from which date and what other directions are necessary in the matter?"

1. The same reference was received in this Tribunal on 27th December 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than a year has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 30 जून, 2021

का.आ. 411.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 176/2019) को प्रकाशित करती है।

[सं. एल-12011/66/2019-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 30th June, 2021

S.O. 411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 176/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/66/2019-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer
Dated 17th March, 2021

Reference (CGITA) No. - 176/2019

1) The Chief General Manager,
State Bank of India, Local Head Office,
8th Floor, Lal Darwaja,
Ahmedabad (Gujarat) – 380001

2) The Proprietor,
M/s. Hardik Constructions,
M-177/2114, Surya Apartment, Opposite Medical Complex,
Sola Road, Naranpura,
Ahmedabad (Gujarat) - 380054 ...First Parties

V/s

The National General Secretary,
Akhil Bharatiya Safai Mazdoor Sangh,
F-1/F-10, Zavernagar Society, Harni Varsiya Road,
Vadodara (Gujarat) - 390022 ...Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-12011/66/2019-IR (B-I) dated 13.12.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the dispute raised by Akhil Bharatiya Safai Mazdoor Sangh, Vadodara against the management of State Bank of India, LHO, Ahmedabad and their contractor, M/s Hardik Constructions, Ahmedabad over alleged illegal termination of services of Shri Paresh Dineshbhai Vaghela, part time sweeper and demand for reinstatement in services with back wages w.e.f. 25.07.2018 is legal, just & proper? If so, to what relief the concerned workman, Shri Paresh Dineshbhai Vaghela, part time sweeper is entitled to and from which date and what other directions are necessary in the matter?"

1. The same reference was received in this Tribunal on 27th December 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than a year has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 30 जून, 2021

का.आ. 412.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 155/2019) को प्रकाशित करती है।

[सं. एल-12011/43/2019-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 30th June, 2021

S.O. 412.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.155/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/43/2019-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer

Reference (CGITA) No. - 155/2019

1) The Chief General Manager,
State Bank of India, Local Head Office,
8th Floor, Lal Darwaja,
Ahmedabad (Gujarat) – 380001

2) The Proprietor,
M/s. Hardik Constructions,
M-177/2114, Surya Apartment, Opposite Medical Complex,
Sola Road, Naranpura,
Ahmedabad (Gujarat) - 380054 ...First Parties

V/s

The National General Secretary,
Akhil Bharatiya Safai Mazdoor Sangh,
F-1/F-10, Zavernagar Society, Harni Varsiya Road,
Vadodara (Gujarat) - 390022 ...Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-12011/43/2019-IR (B-I) dated 10.12.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the dispute raised by Akhil Bharatiya Safai Mazdoor Sangh, Vadodara against the management of State Bank of India, LHO, Ahmedabad and their contractor, M/s Hardik Constructions, Ahmedabad over alleged illegal termination of services of Shri Rahul Rajubhai Solanki, part time sweeper and demand for reinstatement in services with back wages w.e.f. 25.07.2018 is legal, just & proper? If so, to what relief the concerned workman, Shri Rahul Rajubhai Solanki, part time sweeper is entitled to and from which date and what other directions are necessary in the matter?"

1. The same reference was received in this Tribunal on 16th December 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than a year has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 30 जून, 2021

का.आ. 413.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 142/2019) को प्रकाशित करती है।

[सं. एल-41011/36/2019-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 30th June, 2021

S.O. 413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 142/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen.

[No. L-41011/36/2019-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer

Reference (CGITA) No. - 142/2019

The Works Manager,
Signal Factory, Western Railway,
Sabarmati,
Ahmedabad (Gujarat) - 380005 ...First Party

V/s

The Zonal Secretary,
Indian Railway Labour Federation,
28-B, Narayan Park, B/h. Chandkheda Railway Station,
Sabarmati, Ahmedabad (Gujarat)-380005 ...Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-41011/36/2019-IR (B-I) dated 25.11.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the demand of the Zonal Secretary, Indian Railway Labour Federation, Ahmedabad regarding restoration of Family Pension to Smt. Champaben D, to the Railway Administration, Western Railway, Ahmedabad is legal, fair and justified? If yes, then what relief the workman Smt. Champaben D is entitled to and what other directions are necessary in this matter?"

1. The same reference was received in this Tribunal on 02nd December 2019. The Ministry had directed the party raising the dispute to file her statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than a year has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute her claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 1 जुलाई, 2021

का.आ. 414.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विदरबहा कोंकण ग्रामीण बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 92/2018-19) को प्रकाशित करती है।

[सं. एल-12012/04/2019-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 1st July, 2021

S.O. 414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 92/2018-19) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Nagpur as shown in the Annexure, in the industrial dispute between the management of Vidharbha Konkan Gramin Bank and their workmen.

[No. L-12012/04/2019-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/92/2018-19

Party No.1: The Chairman,
Vidharbaha Konkan Gramin Bank, Head Office,
Chabdraprakash, 2nd and 3rd Floor Plot No. 6.
Deendayal Nagar, Ring Road,
Nagpur – 440022.

V/s.

Party No.2: Shri Dushant D. Gowardhan,
Ex Casual Employee, Mul, Tahasil & Post. Mul.
Distt. Chandrapur (M.S.) – 441224.

AWARD

(**Dated:** 24th February 2021)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management Vidharbaha Konkan Gramin Bank, and their workman, Shri Dushant D. Gowardhan. for adjudication, as per letter **No.L-12012/04/2019 (IR (B-1) dated 08/03/2019 ,** with the following schedule:-

> **"Whether the action of the mgt of Vidharbha Konkan Gramin Bank, Regional Office, Chandrapur through the General Manager, Vidarbha Konkan Gramin Bank, RO, Chandrapur in terminating the servicec of the applicant Shri Dushant D. Gowardhan, Ex Daily Wages Worker w.e.f February 2018 is just, fair or legal? If not, to what relief the concerned workman is entitled to?"**

1. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In response to which the workman "Shri Dushant D. Gowardhan" ("Party No. 2" in short) did not appear and did not file statement of claim. The management ''Vidharbaha Kokan Gramin Bank" ("Party No. 1" in short) is not appeared before the Tribunal So they did not file their Written Statement.

2. On perusal of the record, it appears that notices were issued to the parties but nobody appears on behalf of workman/party no.2, advocate 'Gaurav Singh Sengar' appears and filed their Vakalatnama. On 22.02.2021 filed pursis to withdraw their Vakalatnama to support of this pursis he also filed copy of the notice as well as copy of the registered A.D. as well as acknowledgment receipt. He also mentioned the mobile number of workmen. To this office Mr. Ajay also try to contact the mobile no mentioned in the pursis. Concerned contacts No. 07499243195 is not reply. Management advocate Mr. Almalkar appear an other case and ask him to file Memo/power but, he answered "that bank did not gave any instructions for appearance in this case". In this way it appears that Workmen & Management do not entrusted to further proceed in this matter it also appear that no fruitful purpose is solved to further proceed hence order:-

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 1 जुलाई, 2021

का.आ. 415.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 148/2019) को प्रकाशित करती है।

[सं. एल-41011/38/2019-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 1st July, 2021

S.O. 415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.148/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen.

[No. 41011/38/2019-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer
Dated 17th March, 2021

Reference (CGITA) No. - 148/2019

(1) The Dy. Chief Engineer (Construction-II),
Western Railway, Kalupur Railway Station, Kalupur,
Ahmedabad (Gujarat) – 380001

(2) The Dy. Chief Engineer (Construction),
Western Railway,
SURAT (Gujarat) – 395003

(3) The Senior Section Engineer (C),
Western Railway,
Mehsana (Gujarat) – 384001

(4) The Senior Divisional Finance Manager,
Western Railway, Kothi Compound,
Rajkot (Gujarat) – 360001

(5) The Finance Advisor and Chief Account Officer
Western Railway, Churchgate,
Mumbai – 400020

(6) The Finance Advisor and Chief Account Officer (C),
Western Railway, Kalupur Railway Station,
Kalupur,
Ahmedabad (Gujarat)-380001 ...First Parties

V/s

The Secretary,
Indian Railway Labour Federation,
28-B, Narayan Park, B/h. Chandkheda Railway Station,
Sabarmati, Ahmedabad (Gujarat)-380005 ...Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-41011/38/2019-IR (B-I) dated 27.11.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the demand of Union regarding (1) Payment of leave encashment (2) Payment Bonus for the year 2016-17, (3) Payment of transferred allowance on retirement and refund of amount deducted from pension to Shri A. K. Gupta against the management of , Western Railway, Ahmedabad is legal, fair & justified? If yes, then what relief Shri A. K. Gupta is entitled to and what other direction are necessary in this matter?"

1. The same reference was received in this Tribunal on 09th December 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than a year has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 1 जुलाई, 2021

का.आ. 416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 124/2019) को प्रकाशित करती है।

[सं. एल-41011/27/2019-आईआर (बी-1]

डी. गुहा, अवर सचिव

New Delhi, the 1st July, 2021

S.O. 416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.124/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen.

[No. 41011/27/2019 - IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer

Reference (CGITA) No. - 124/2019

The Divisional Railway Manager,
Western Railway,
Ratlam (MP) - 457001 …First Party

V/s

The Secretary,
Indian Railway Labour Federation,
28-B, Narayan Park,
B/h. Chandkheda Railway Station, Sabarmati,
Ahmedabad (Gujarat) – 382470 …Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-41011/27/2019-IR (B-I) dated 12.09.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the demand of the Secretary, Indian Railway Labour Federation, Ahmedabad against the Divisional Railway Manager, W.R. Ratlam to grant compensation under E.C Act, 1923 to the workman, Shri Makna Madia and railway service on compassionate ground to his son is legal, fair and justified? If so, then what relief the Shri Makna Madia is entitled to and what other direction are necessary, if any the matter?"

1. The same reference was received in this Tribunal on 23rd September 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than a year had been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

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